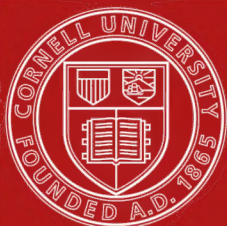


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TRÉASURY DEPARTMENT
UNITED STATES INTERNAL REVENUE

REGULATIONS 63
(1922 EDITION)

RELATING TO

ESTATE TAX

UNDER THE

REVENUE ACT OF 1921



WASHINGTON
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These regulations apply to the estates of decedents dying after the effective date of Title IV of the Revenue Act of 1921. Estate Tax Regulations No. 37 (revised January, 1921) remain in full force and effect, subject to such modifications and changes therein as are specified in Article 106, *infra*.

(II)

REGULATIONS.

RELATING TO THE

ESTATE TAX

UNDER

TITLE IV OF THE REVENUE ACT OF 1921.

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REGULATIONS.

ESTATE TAX.

[Except as otherwise specified, the section references are to the Revenue Act of 1921.]

SEC. 400. That when used in this title—

The term "executor" means the executor or administrator of the decedent, or, if there is no executor or administrator, any person in actual or constructive possession of any property of the decedent;

The term "net estate" means the net estate as determined under the provisions of section 403;

The term "month" means calendar month; and

The term "collector" means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner.

SEC. 401. That, in lieu of the tax imposed by Title IV of the Revenue Act of 1918, a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 403) is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, whether a resident or non-resident of the United States:

1 per centum of the amount of the net estate not in excess of \$50,000;

2 per centum of the amount by which the net estate exceeds \$50,000 and does not exceed \$150,000;

3 per centum of the amount by which the net estate exceeds \$150,000 and does not exceed \$250,000;

4 per centum of the amount by which the net estate exceeds \$250,000 and does not exceed \$450,000;

6 per centum of the amount by which the net estate exceeds \$450,000, and does not exceed \$750,000;

8 per centum of the amount by which the net estate exceeds \$750,000 and does not exceed \$1,000,000;

10 per centum of the amount by which the net estate exceeds \$1,000,000 and does not exceed \$1,500,000;

12 per centum of the amount by which the net estate exceeds \$1,500,000 and does not exceed \$2,000,000;

14 per centum of the amount by which the net estate exceeds \$2,000,000 and does not exceed \$3,000,000;

16 per centum of the amount by which the net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

18 per centum of the amount by which the net estate exceeds \$4,000,000 and does not exceed \$5,000,000;

20 per centum of the amount by which the net estate exceeds \$5,000,-000 and does not exceed \$8,000,000;

22 per centum of the amount by which the net estate exceeds \$8,000,-000 and does not exceed \$10,000,000; and

25 per centum of the amount by which the net estate exceeds \$10,-000,000.

The taxes imposed by this title or by Title II of the Revenue Act of 1916 (as amended by the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes," approved March 3, 1917) or by Title IX of the Revenue Act of 1917, or by Title IV of the Revenue Act of 1918, shall not apply to the transfer of the net estate of any decedent who has died or may die from injuries received or disease contracted in line of duty while serving in the military or naval forces of the United States in the war against the German Government, or to the transfer of the net estate of any citizen of the United States who has died or may die from injuries received or disease contracted in line of duty while serving in the military or naval forces of any country while associated with the United States in the prosecution of such war, or prior to the entrance therein of the United States, and any tax collected upon such transfer shall be refunded to the estate of such decedent.

ARTICLE 1. The various statutes.—The Federal estate tax was first imposed by the Act of September 8, 1916. This law was amended by the Act of March 3, 1917 (Title III), and the Act of October 3, 1917 (Title IX). These two statutes increased the rate of tax. The Revenue Act of 1918 (Title IV), which became effective 6.55 p. m., Washington, D. C. time, February 24, 1919, reduced the rates applicable to the smaller net estates as compared with those of Title IX of the Revenue Act of 1917, and contained a number of provisions not found in any of the prior acts. The Revenue Act of 1921 (Title IV) became effective at 3.55 p. m., Washington, D. C. time, November 23, 1921. It reenacts without change the rates of Title IV of the Revenue Act of 1918, supplants all prior acts as to the estates of decedents dying after the effective date thereof, embodies numerous changes, but continues many of the provisions of the earlier acts. It is herein referred to as "the statute." References to other statutes are specific.

ART. 2. Transfers reached.—The statute subjects to tax transfers by will and under intestate laws, and also transfers made by the decedent in his lifetime, when made in contemplation of death or intended to take effect in possession or enjoyment at or after his death, excepting, however, bona fide sales for a fair consideration in money or money's worth. Transfers of certain other property interests are also included.

ART. 3. Neither a property nor an inheritance tax.—The Federal estate tax is imposed upon the transfer of the net estate of every

person dying after September 8, 1916, determined in the manner prescribed by the applicable law. (See Art. 1.) The tax is not laid upon the property, but upon its transfer from the decedent to others. The subject of tax is the transfer of the entire net estate, not any particular legacy, devise, or distributive share, and the relationship of the beneficiary to the decedent has no bearing upon the question of liability, or the extent thereof. The transfer of property is taxable, although it escheats to the State for lack of heirs.

ESTATES SUBJECT TO TAX.

ART. 4. Description of taxable estates.—The tax is imposed upon the transfer of the net estate. The term “net estate” has a distinct meaning in the statute, signifying the difference between the total value of the gross estate and the total of the authorized deductions. One of the deductions authorized in the estate of a resident decedent is the specific sum of \$50,000, and consequently there is no net estate where the gross estate does not exceed that amount. No such deduction is authorized in the estate of a nonresident decedent. (See Arts. 53 to 58, inclusive.)

ART. 5. Definition of “resident” and “nonresident.”—The statute provides (paragraph (5) of section 2) that the term “United States,” when used in a geographical sense, includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

A resident is one who, at the time of his death, had his domicile in the United States; or one who was a citizen of the United States at time of death and with respect to whose property any probate or administration proceedings are had in the United States Court for China. (See Sec. 411.) A missionary who, at the time of death, was serving as such under a foreign missionary board of any religious denomination in the United States, will be presumed to have died a resident of the United States, if domiciled therein at the time of his or her commission and departure for such service, and not a nonresident merely by reason of his or her intention to permanently remain in such service. (See Sec. 403(b).) Subject to the foregoing exceptions, and the presumption applying in the case of such missionaries, all other persons are nonresidents.

Except as stated above, and in section 400 of the statute in respect to the exemption accorded on account of military or naval service in the late war, the statute takes no account of the citizenship of the decedent, but prescribes different rules for the estates of residents and nonresidents.

A citizen of the United States is a nonresident if his domicile is in Porto Rico, the Philippine Islands, or other foreign country, whereas a citizen of a foreign country is a resident

if his domicile is in the United States. A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal.

DETERMINATION OF TAX LIABILITY.

ART. 6. Manner of determining liability.—The first step in the determination of tax liability is to ascertain the total value of the decedent's gross estate. (See Arts. 11 to 31, inclusive; also Art. 53.) The second step is to subtract from this value the total deductions authorized in order to arrive at the value of the net estate. (See Arts. 32 to 52, inclusive, as to estates of residents; and Arts. 54 to 58, inclusive, as to estates of nonresidents.) The third step is to obtain the sum of certain percentages of successive portions of the net estate, as provided by the applicable taxing act. (See Arts. 7 and 8.)

ART. 7. Rates of tax.—The Revenue Act of 1916, the amendment thereto of March 3, 1917, the Revenue Act of 1917, and the Revenue Act of 1918, each imposed different rates of tax. The rates imposed by the Revenue Act of 1921 are the same as those prescribed in the Revenue Act of 1918. In each act the rates contained therein are applicable to the estates of decedents dying on or after the effective date thereof, and prior to the effective date of the next succeeding act. A table of the several rates is given below:

Rates of estate tax.

Blocks of net estate.			1	2	3	4
Exceeding	Not exceeding	Amount of block.	Act of 1916 (effective Sept. 9, 1916).	Amendment of Mar. 3, 1917 (effective Mar. 3, 1917).	Act of 1917 (effective Oct. 4, 1917).	Acts of 1918 and 1921. (For effective dates, see below.)
			<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>
	\$50,000	\$50,000	1	1½	2	1
\$50,000	150,000	100,000	2	3	4	2
150,000	250,000	100,000	3	4½	6	3
250,000	350,000	200,000	4	6	8	4
350,000	450,000	300,000	5	7½	10	5
450,000	550,000	400,000	6	9	12	6
550,000	650,000	500,000	7	10½	14	7
650,000	750,000	600,000	8	12	16	8
750,000	850,000	700,000	9	13½	18	9
850,000	950,000	800,000	10	15	20	10
950,000	1,050,000	900,000	10	15	20	10
1,050,000	1,150,000	1,000,000	10	15	22	10
1,150,000	1,250,000	1,100,000	10	15	22	10
1,250,000	1,350,000	1,200,000	10	15	22	10
1,350,000	1,450,000	1,300,000	10	15	22	10
1,450,000	1,550,000	1,400,000	10	15	22	10
1,550,000	1,650,000	1,500,000	10	15	22	10
1,650,000	1,750,000	1,600,000	10	15	22	10
1,750,000	1,850,000	1,700,000	10	15	22	10
1,850,000	1,950,000	1,800,000	10	15	22	10
1,950,000	2,050,000	1,900,000	10	15	22	10
2,050,000	2,150,000	2,000,000	10	15	22	10
2,150,000	2,250,000	2,100,000	10	15	22	10
2,250,000	2,350,000	2,200,000	10	15	22	10
2,350,000	2,450,000	2,300,000	10	15	22	10
2,450,000	2,550,000	2,400,000	10	15	22	10
2,550,000	2,650,000	2,500,000	10	15	22	10
2,650,000	2,750,000	2,600,000	10	15	22	10
2,750,000	2,850,000	2,700,000	10	15	22	10
2,850,000	2,950,000	2,800,000	10	15	22	10
2,950,000	3,050,000	2,900,000	10	15	22	10
3,050,000	3,150,000	3,000,000	10	15	22	10
3,150,000	3,250,000	3,100,000	10	15	22	10
3,250,000	3,350,000	3,200,000	10	15	22	10
3,350,000	3,450,000	3,300,000	10	15	22	10
3,450,000	3,550,000	3,400,000	10	15	22	10
3,550,000	3,650,000	3,500,000	10	15	22	10
3,650,000	3,750,000	3,600,000	10	15	22	10
3,750,000	3,850,000	3,700,000	10	15	22	10
3,850,000	3,950,000	3,800,000	10	15	22	10
3,950,000	4,050,000	3,900,000	10	15	22	10
4,050,000	4,150,000	4,000,000	10	15	22	10
4,150,000	4,250,000	4,100,000	10	15	22	10
4,250,000	4,350,000	4,200,000	10	15	22	10
4,350,000	4,450,000	4,300,000	10	15	22	10
4,450,000	4,550,000	4,400,000	10	15	22	10
4,550,000	4,650,000	4,500,000	10	15	22	10
4,650,000	4,750,000	4,600,000	10	15	22	10
4,750,000	4,850,000	4,700,000	10	15	22	10
4,850,000	4,950,000	4,800,000	10	15	22	10
4,950,000	5,050,000	4,900,000	10	15	22	10
5,050,000	5,150,000	5,000,000	10	15	22	10
5,150,000	5,250,000	5,100,000	10	15	22	10
5,250,000	5,350,000	5,200,000	10	15	22	10
5,350,000	5,450,000	5,300,000	10	15	22	10
5,450,000	5,550,000	5,400,000	10	15	22	10
5,550,000	5,650,000	5,500,000	10	15	22	10
5,650,000	5,750,000	5,600,000	10	15	22	10
5,750,000	5,850,000	5,700,000	10	15	22	10
5,850,000	5,950,000	5,800,000	10	15	22	10
5,950,000	6,050,000	5,900,000	10	15	22	10
6,050,000	6,150,000	6,000,000	10	15	22	10
6,150,000	6,250,000	6,100,000	10	15	22	10
6,250,000	6,350,000	6,200,000	10	15	22	10
6,350,000	6,450,000	6,300,000	10	15	22	10
6,450,000	6,550,000	6,400,000	10	15	22	10
6,550,000	6,650,000	6,500,000	10	15	22	10
6,650,000	6,750,000	6,600,000	10	15	22	10
6,750,000	6,850,000	6,700,000	10	15	22	10
6,850,000	6,950,000	6,800,000	10	15	22	10
6,950,000	7,050,000	6,900,000	10	15	22	10
7,050,000	7,150,000	7,000,000	10	15	22	10
7,150,000	7,250,000	7,100,000	10	15	22	10
7,250,000	7,350,000	7,200,000	10	15	22	10
7,350,000	7,450,000	7,300,000	10	15	22	10
7,450,000	7,550,000	7,400,000	10	15	22	10
7,550,000	7,650,000	7,500,000	10	15	22	10
7,650,000	7,750,000	7,600,000	10	15	22	10
7,750,000	7,850,000	7,700,000	10	15	22	10
7,850,000	7,950,000	7,800,000	10	15	22	10
7,950,000	8,050,000	7,900,000	10	15	22	10
8,050,000	8,150,000	8,000,000	10	15	22	10
8,150,000	8,250,000	8,100,000	10	15	22	10
8,250,000	8,350,000	8,200,000	10	15	22	10
8,350,000	8,450,000	8,300,000	10	15	22	10
8,450,000	8,550,000	8,400,000	10	15	22	10
8,550,000	8,650,000	8,500,000	10	15	22	10
8,650,000	8,750,000	8,600,000	10	15	22	10
8,750,000	8,850,000	8,700,000	10	15	22	10
8,850,000	8,950,000	8,800,000	10	15	22	10
8,950,000	9,050,000	8,900,000	10	15	22	10
9,050,000	9,150,000	9,000,000	10	15	22	10
9,150,000	9,250,000	9,100,000	10	15	22	10
9,250,000	9,350,000	9,200,000	10	15	22	10
9,350,000	9,450,000	9,300,000	10	15	22	10
9,450,000	9,550,000	9,400,000	10	15	22	10
9,550,000	9,650,000	9,500,000	10	15	22	10
9,650,000	9,750,000	9,600,000	10	15	22	10
9,750,000	9,850,000	9,700,000	10	15	22	10
9,850,000	9,950,000	9,800,000	10	15	22	10
9,950,000	10,050,000	9,900,000	10	15	22	10
10,050,000	10,150,000	10,000,000	10	15	22	10
10,150,000	10,250,000	10,100,000	10	15	22	10
10,250,000	10,350,000	10,200,000	10	15	22	10
10,350,000	10,450,000	10,300,000	10	15	22	10
10,450,000	10,550,000	10,400,000	10	15	22	10
10,550,000	10,650,000	10,500,000	10	15	22	10
10,650,000	10,750,000	10,600,000	10	15	22	10
10,750,000	10,850,000	10,700,000	10	15	22	10
10,850,000	10,950,000	10,800,000	10	15	22	10
10,950,000	11,050,000	10,900,000	10	15	22	10
11,050,000	11,150,000	11,000,000	10	15	22	10
11,150,000	11,250,000	11,100,000	10	15	22	10
11,250,000	11,350,000	11,200,000	10	15	22	10
11,350,000	11,450,000	11,300,000	10	15	22	10
11,450,000	11,550,000	11,400,000	10	15	22	10
11,550,000	11,650,000	11,500,000	10	15	22	10
11,650,000	11,750,000	11,600,000	10	15	22	10
11,750,000	11,850,000	11,700,000	10	15	22	10
11,850,000	11,950,000	11,800,000	10	15	22	10
11,950,000	12,050,000	11,900,000	10	15	22	10
12,050,000	12,150,000	12,000,000	10	15	22	10
12,150,000	12,250,000	12,100,000	10	15	22	10
12,250,000	12,350,000	12,200,000	10	15	22	10
12,350,000	12,450,000	12,300,000	10	15	22	10
12,450,000	12,550,000	12,400,000	10	15	22	10
12,550,000	12,650,000	12,500,000	10	15	22	10
12,650,000	12,750,000	12,600,000	10	15	22	10
12,750,000	12,850,000	12,700,000	10	15	22	10
12,850,000	12,950,000	12,800,000	10	15	22	10
12,950,000	13,050,000	12,900,000	10	15	22	10
13,050,000	13,150,000	13,000,000	10	15	22	10
13,150,000	13,250,000	13,100,000	10	15	22	10
13,250,000	13,350,000	13,200,000	10	15	22	10
13,350,000	13,450,000	13,300,000	10	15	22	10
13,450,000	13,550,000	13,400,000	10	15	22	10
13,550,000	13,650,000	13,500,000	10	15	22	10
13,650,000	13,750,000	13,600,000	10	15	22	10
13,750,000	13,850,000	13,700,000	10	15	22	10
13,850,000	13,950,000	13,800,000	10	15	22	10
13,950,000	14,050,000	13,900,000	10	15	22	10
14,050,000	14,150,000	14,000,000	10	15	22	10
14,150,000	14,250,000	14,100,000	10	15	22	10
14,250,000	14,350,000	14,200,000	10	15	22	10
14,350,000	14,450,000	14,300,000	10	15	22	10
14,450,000	14,550,000	14,400,000	10	15	22	10
14,550,000	14,650,000	14,500,000	10	15	22	10
14,650,000	14,750,000	14,600,000	10	15	22	10
14,750,000	14,850,000	14,700,000	10	15	22	10
14,850,000	14,950,000	14,800,000	10	15	22	10
14,950,000	15,050,000	14,900,000	10	15	22	10
15,050,000	15,150,000	15,000,000	10	15	22	10
15,150,000	15,250,000	15,100,000	10	15	22	10
15,250,000	15,350,000	15,200,000	10	15	22	10
15,350,000	15,450,000	15,300,000	10	15	22	10
15,450,000	15,550,000	15,400,000	10	15	22	10
15,550,000	15,650,000	15,500,000	10	15	22	10
15,650,000	15,750,000	15,600,000	10	15	22	10
15,750,000	15,850,000	15,700,000	10	15	22	10
15,850,000	15,950,000	15,800,000	10	15	22	10
15,950,000	16,050,000	15,900,000	10	15	22	10
16,050,000	16,150,000	16,000,000	10	15	22	10
16,150,000	16,250,000					

The rates prescribed by the different acts, as set forth above, apply to the estates of decedents dying within the following dates:

Column 1, Revenue Act of 1916, effective Sept. 9, 1916, to Mar. 2, 1917, inclusive.

Column 2, amendment of Mar. 3, 1917, effective Mar. 3, 1917, to Oct. 3, 1917, inclusive.

Column 3, Revenue Act of 1917, effective Oct. 4, 1917, to 6.55 p. m., Washington, D. C., time, Feb. 24, 1919, inclusive.

Column 4, Revenue Act of 1918, effective 6.55 p. m. Feb. 24, 1919, to 3.55 p. m., Nov. '23, 1921 (Washington, D. C., time), on which last named hour and date the Revenue Act of 1921 became effective.

ART. 8. Computation of tax.—For the purpose of computing the tax, the net estate is divisible into blocks, each block being taxed at a different and increasing rate. The preceding table gives the amount of the various blocks and the applicable rate of tax under each of the taxing acts. For example, the tax upon the net estate of \$1,240,000 of a decedent dying on March 1, 1919, is computed as follows:

Amount of first block-----	\$50,000 at 1 per cent	\$500
Amount of second block-----	100,000 at 2 per cent	2,000
Amount of third block-----	100,000 at 3 per cent	3,000
Amount of fourth block-----	200,000 at 4 per cent	8,000
Amount of fifth block-----	300,000 at 6 per cent	18,000
Amount of sixth block-----	250,000 at 8 per cent	20,000
Remainder-----	240,000 at 10 per cent	24,000
<hr/>		
Total net estate-----	1,240,000	Total tax-- 75,500

There is subjoined a table for ascertaining the tax without the detailed computation given above. An illustration of its use is as follows: The net estate of a decedent dying March 1, 1919, amounts to \$1,240,000. By reference to the table it will be seen that the last complete block preceeding this amount is \$1,000,000, and that the total tax computed on a million dollars under the rates in force amounts to \$51,500. Upon the remainder of the net estate, \$240,000, the tax is computed at the rate set out in the next following line, or at 10 per cent. The tax on this amount is consequently \$24,000. The following result is thus obtained:

Total tax on-----	\$1,000,000=	\$51,500
Tax on -----	240,000=	24,000
<hr/>		
Totals -----	1,240,000	75,500

Table for computing estate tax.

Net estate.		1		2		3		4		
		Date of death.								
Exceeding—	Not ex- ceeding—	Amount of block.	Sept. 9, 1916, to Mar. 2, 1917, inclusive (Revenue Act of 1916).		Mar. 3, 1917, to Oct. 3, 1917, inclusive (Amendment).		Oct. 4, 1917, to 6.55 p. m., Feb. 24, 1919, inclusive (Revenue Act of 1917).		After 6.55 p. m., Feb. 24, 1919 / (Revenue Acts of 1918 and 1921).	
			Rate (per cent).	Tax.	Total.	Rate (per cent).	Tax.	Total.	Rate (per cent).	Tax.
.....	\$50,000	\$50,000	1	\$500	\$500	1½	\$750	\$750	2	\$1,000
.....	150,000	100,000	2	2,000	2,500	3	3,000	3,750	4	5,000
.....	250,000	200,000	3	3,000	5,500	4½	4,500	8,250	6	11,000
.....	450,000	300,000	4	8,000	13,500	6½	12,000	20,250	8	27,000
.....	750,000	400,000	5	15,000	28,500	7½	22,500	42,750	10	57,000
.....	1,000,000	500,000	6	12,500	41,000	7½	18,750	61,500	10	82,000
.....	1,500,000	600,000	7	30,000	71,000	9	45,000	106,500	12	142,000
.....	2,000,000	700,000	8	30,000	101,000	10½	105,000	151,500	12	202,000
.....	3,000,000	1,000,000	9	70,000	171,000	12	120,000	226,500	14	342,000
.....	4,000,000	1,000,000	10	80,000	251,000	12	120,000	376,500	16	502,000
.....	5,000,000	1,000,000	11	90,000	341,000	13½	135,000	511,500	18	682,000
.....	6,000,000	1,000,000	12	100,000	441,000	15	150,000	661,500	20	882,000
.....	7,000,000	1,000,000	13	100,000	541,000	15	150,000	811,500	20	1,082,000
.....	8,000,000	1,000,000	14	100,000	641,000	15	150,000	961,500	20	1,282,000
.....	9,000,000	1,000,000	15	100,000	741,000	15	150,000	1,111,500	22	1,502,000
.....	10,000,000	1,000,000	16	100,000	841,000	15	150,000	1,261,500	22	1,722,000
.....	17	15	25
.....	18	15
.....	19	15
.....	20	15
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EXEMPT ESTATES—SERVICE IN WORLD WAR.

ART. 9. Exempt estates.—The first exemption from estate tax, on account of military or naval service in the war against Germany, was contained in the Revenue Act of 1917, and applied to the estate "of any decedent dying while serving in the military or naval forces of the United States, during the continuance of the war in which the United States is now engaged, or if death results from injuries received or disease contracted in such service, within one year after the termination of such war," and was limited to the increased rates of tax imposed thereby, and to the estates of decedents dying after its passage.

In the Revenue Act of 1918 the exemption was extended to include the estate "of any decedent who has died or may die while serving in the military or naval forces of the United States in the present war or from injuries received or disease contracted while in such service," and embodied a retroactive provision rendering the exemption available under the former Acts, and authorized the refund of taxes collected under the provisions thereof from estates to which the exemption applied. Where such taxes have been paid or collected, a claim for refund on Form 843 should be filed accompanied by such of the proofs prescribed in Article 10 as may be applicable to the particular case. (See Arts. 63 and 96.)

The Revenue Act of 1921 exempts from tax the estates of two classes of decedents, namely: (1) Where the decedent died from injuries received or disease contracted in line of duty while serving in the military or naval forces of the United States in the war against the German Government. The term "military or naval forces of the United States" includes, among other units, the Marine Corps, the Coast Guard, the Army Nurse Corps, Female, and the Navy Nurse Corps, Female; but does not include personnel of the Public Health Service. (2) Where the decedent, a citizen of the United States, enlisted in the military or naval forces of any country associated with the United States in the prosecution of such war, and whose death resulted from injuries received or disease contracted in line of duty while serving in such forces, either prior to the entrance of the United States into such war, or during the time such country was associated with the United States in the prosecution thereof. The estate of such a decedent is not deprived of the benefit of this exemption by reason of the fact that, as a condition precedent to his enlistment in the military or naval forces of any such country, the decedent was required to take an oath of allegiance to such country or to the reigning sovereign thereof. Under the retroactive provision of this Act the exemption, as will be noted, is made available to the estates of those whose deaths resulted from injuries re-

ceived or disease contracted "in line of duty" while serving, as above set out, in the military or naval forces of such a foreign country. The exemption is conditioned, both with respect to service in the military or naval forces of the United States and such a foreign country, upon death resulting from injuries received or disease contracted "in line of duty"; a condition which, in all cases, operates wherever the death occurred subsequent to the effective date of this Act. (See Art. 1.) The Act contains a refundment clause similar to that in the Revenue Act of 1918. (See Arts. 63 and 96.)

As to the United States, and so far as concerns the provisions of the various Revenue Acts imposing an estate tax, such war terminated March 3, 1921, by virtue of the joint resolution of Congress approved on that date.

ART. 10. Exemption must be proved.—In every case where the exemption is claimed the right must be proved by the estate. Formal claim for exemption on Form 793, accompanied by supporting evidence, should be filed with the notice required by section 404 (see Art. 63), or as soon thereafter as the necessary evidence may be secured, and in any case not later than one year after the decedent's death. Where decedent died before his discharge from the military or naval forces of the United States, and it is claimed that his death resulted from injuries received or disease contracted in line of duty during the war with Germany, there should be submitted:

(1) In the case of a soldier, a certificate of the Adjutant General of the Army; in the case of a sailor, a certificate of the Surgeon General of the Navy; in the case of a Marine, a certificate of the Commandant of the Marine Corps; and in the case of a person who served in any auxiliary force comprehended within the term "military or naval forces of the United States," a certificate of the proper authority, showing the occurrence of death while in the service, and whether, by the official records, it resulted from injuries received or disease contracted in line of duty during such war.

(2) In the event that the official records do not disclose all the pertinent facts, then affidavits of officers or enlisted men will be considered in connection with such records as to the incurrence of injury or disease in line of duty during such war.

Where the decedent died after discharge from the military or naval forces of the United States, there should be submitted:

(1) Certificate of discharge from the service, or a duly verified copy of such certificate.

(2) Certified copy of public record of death, showing cause of death.

(3) Affidavit or affidavits of the attending physician or physicians, setting forth decedent's medical history while under the treatment of such physician or physicians.

(4) Affidavits of officers or enlisted men or other evidence bearing upon the question whether death resulted from injuries received or disease contracted in line of duty while serving in the military or naval forces of the United States during such war.

Where it is claimed that the decedent, a citizen of the United States who enlisted in the military or naval forces of any country associated with the United States in the prosecution of such war, died from injuries received or disease contracted in line of duty while in such foreign service, as more fully explained in the third paragraph of this article, there shall be submitted:

(1) Evidence showing his citizenship at the time of such enlistment.

(2) A complete copy of the official records of his service in the forces of the foreign country, certified by the custodian thereof.

Where, in any case, it is determined by the Commissioner that the estate is entitled to the exemption, the executor will be notified to that effect, and his duties with respect to the tax will cease. If the evidence submitted in support of the claim is found not to be satisfactory, such further evidence will be called for, or such investigation instituted, as the Commissioner may direct. If it is determined that the estate is not entitled to the exemption, the executor will be required to file return and pay tax in the same manner as executors of other taxable estates.

GROSS ESTATE—GENERAL.

Sec. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate;

ART. 11. Character of interests included.—It is designed by the foregoing provision of the statute that there shall be included in the gross estate the value of all property of the decedent whether real or personal, tangible or intangible, the beneficial ownership of which was in the decedent in his lifetime, and which, upon his death, formed his estate.

The test which determines whether the value of a given interest is to be so included, pursuant to the foregoing provision of the statute, is that stated therein which requires that the property, after death, shall be subject to: (1) payment of the charges against the estate, (2) payment of the expenses of administration, and (3) distribution as a part of the estate.

The value of a vested remainder should be included in the gross estate. Nothing should be included, however, on account of a con-

tingent remainder where the contingency does not happen in the lifetime of the decedent, and the interest consequently lapses at his death. Nor should anything be included on account of an interest or an estate limited for the life of the decedent. There should be included, however, the value of an annuity payable to, or an interest or an estate vested in, the decedent for the life of another person who survives him. For rules in valuing such remainders, annuities, and interests or estates *pur autre vie*, see Article 15.

ART. 12. Specific property to be included.—The value of all real property situated in the United States, and owned by the decedent at the date of his death, should be included in the gross estate, whether the decedent was a resident or a nonresident, and whether the property came into the possession and control of the executor or administrator or passed directly to heirs or devisees. The value of real property situated outside the United States should not be included, except as otherwise provided in Articles 55, 56, and 57, where deductions from gross estate are claimed and the decedent was a nonresident. Where the decedent was a resident, the value of all personal property owned by him should be included, wherever situated. Where decedent was a nonresident, the value of so much of his personal property as had its situs in the United States at the time of his death should be included, and the value of his entire gross estate, wherever situated, if deductions are claimed. (See Arts. 55, 56, and 57.) As to the situs of the personal property of nonresident decedents, see Article 53.

A cemetery lot owned by the decedent is part of his gross estate, but its value is limited to the salable value of such part of it as is not designed for the interment of the decedent or members of his family. Rents and interest which had accrued at the time of the decedent's death, whether then payable or not, and unpaid matured coupons, should be included. The value of notes or other claims held by the decedent should be included, though they are canceled by his will. As to the valuation of notes and claims, see Article 14, paragraphs 4 and 7. All bonds, whether federal, state, or municipal, and whether or not containing a tax-free covenant, should be included.

Dividends on either common or preferred stock should be included only where declared prior to the decedent's death and not reflected in the market value of the stock on the day of death. Thus dividends, both declared and payable to holders of record on a date prior to the decedent's death, should be included, provided the stock was selling "ex dividend" on the date of death.

Example: A 5 per cent dividend upon stock is declared March 1, payable on April 1 to stockholders of record on March 15. If the death occurred on March 10 and the market value on that day was

90, the value to be returned for both stock and dividend is 90, the dividend being reflected in the market value of the stock. If the death occurred on March 20, the dividend is not reflected in the market value, and must be returned in addition to the market value of the stock on March 20.

ART. 13. Value.—Property of the decedent should be returned at its market or sale value at the time of the decedent's death. The criterion of such value is the price which a willing buyer will pay to a willing seller for the property in question under the circumstances existing at the date of the decedent's death or within such reasonable period thereafter as would afford proper opportunity for an examination and sale thereof. Neither depreciation nor appreciation in value subsequent to the date of decedent's death is considered.

ART. 14. Rules for the valuation of property.—(1) *Real estate.*—Where real property has been sold, the amount received will be taken as its value provided the sale met the conditions laid down in Article 13. Where no sale has been made, the criterion of value is the best price which could have been obtained within a reasonable period of the decedent's death. The property should not be returned at the local assessed value thereof unless such value represents the true market value at the date of decedent's death. All relevant facts and all elements of value should be considered in every case.

(2).—*Stocks and bonds.*—The value of stocks and bonds listed upon a stock exchange should be determined by taking the mean between the highest and lowest quoted selling price upon the date of death. If there were no sales on the date of death the value should be determined by taking the mean between the highest and lowest sales upon the nearest date either before or after the date of death if within a reasonable period. If the decedent died on a Sunday or holiday, the transaction of the next previous business day will govern. If the security is listed upon more than one exchange, the records of the principal exchange should be employed. In general, in valuing listed stocks and bonds the executor should observe care to consult accurate records to obtain value as of the date of death.

If the securities are not listed upon an exchange but are dealt in actively by brokers or have an active market, the value should be determined by taking the sale price as of the date of death or of the nearest date thereto if within a reasonable period. Securities which are not dealt in actively enough to establish market value clearly but in which there are occasional transactions should be valued upon the basis of the nearest sales to the date of death, provided such sales were in the normal course of business, between a willing buyer and a willing seller who were trying to make the best bargain possible. Where quotations are obtained from

brokers or where evidence as to the sale of securities is obtained from the officers of the issuing companies, the executor is requested to preserve in his files the letters furnishing quotations for inspection when the return is verified by an investigating officer.

Where securities are actively quoted on a bid and asked basis and actual sales are not available, the bid price as of the date of death will be accepted as the value. In the case of corporate and other bonds where there is no active market, the value is to be determined by giving consideration to the soundness of the security, the interest yield, the date of maturity, and any other relevant factors.

Where there is no active market for the stock or securities (whether listed or unlisted) owned by the estate, or where the sales thereof made from time to time are seriously disproportionate in number of shares sold to the holdings of the decedent, and the executor proceeds in good faith promptly and within a reasonable time to make a bona fide sale or sales of any of such stocks or securities, the amount so realized will be accepted as the value. Sales, however, of only a few shares out of a large holding, or sales made without a real effort to secure the widest market possible, or sales made merely for the purpose of fixing value will not be considered as conclusive.

If in connection with the value of any particular security conditions of sale or ownership are such that the market value determined as indicated above would not afford a proper basis for the valuation of the decedent's securities the Commissioner on final audit will establish the value by considering all other factors relating to the case. In any case where the estate contends that the value as established by the general rules stated above is not the fair market value for the security owned by the decedent on the date of his death, the evidence upon which it bases its contention should be filed with the return.

Stock in corporations where there have been no bona fide sales within a reasonable period of a number of shares fairly comparable to the decedent's holdings should be valued at what a willing buyer would pay to a willing seller, both being fully informed of the financial condition of the company at the date of death.

Where the decedent's holdings are relatively small, a copy of the balance sheet of the corporation nearest to the date of the decedent's death and a statement of the earnings and dividends for the five years preceding death should be submitted in duplicate with the return wherever practicable. Where the decedent's holdings are relatively large and it is practicable to do so, the fullest financial data should be submitted in duplicate with the return, including in particular balance sheets of the corporation for the five years pre-

ceding death, a statement of the net earnings and dividends paid by the company over this period or over a sufficient number (either greater or less) of years prior to the decedent's death to demonstrate the normal earning capacity of the corporation, and a summary of the market conditions and future prospects of the company at the date of the decedent's death, together with a statement showing the relation, if any, of the decedent to the actual operation of the company, the effect of his death thereon, and any and all other factors which may have a bearing upon the value of the stock. Where examinations of a company have been made by accountants, engineers, or other technical experts as of or about the date of death, copies of their reports should be filed with the return where they can be obtained without undue trouble or expense to the estate. In general, the estate should show the basis of its return and submit any financial data that will enable the commissioner accurately and intelligently to review the case.

The full value of securities pledged to secure a loan should be included in the gross estate. If the decedent had a trading account with a broker, all securities belonging to the decedent and held by the broker at the date of death must be included at their market value on that date. Securities purchased on margin for the decedent's account and held by the broker should also be returned at their market value on the date of death. The amount of the decedent's indebtedness to the broker, or other person with whom the securities were pledged, will be allowed as a deduction from the gross estate. (See Art. 39.)

(3) *Interest in business.*—Care should be taken to arrive at an accurate valuation of any business in which the decedent was interested, whether as partner or proprietor. A fair appraisal as of the date of death should be made of all the assets of the business, tangible and intangible, and the business should be given a net worth equal to the amount which a purchaser, whether an individual or corporation, would be willing to pay therefor at a normal sale in view of the net value of the assets and the demonstrated earning capacity. Special attention should be given to fixing an adequate figure for the value of the good will of the business in all cases where the decedent has not, for a fair consideration in money or money's worth, agreed that his interest therein shall pass at his death to his surviving partner or partners.

In general, the rules stated above relative to the valuation of other property are applicable to the valuation of an interest as proprietor or partner in a business, and all evidence bearing upon such valuation should be submitted with the return, including copies of reports in any case where examinations of a business have been made by accountants, engineers, or other technical experts as of or about the date of decedent's death.

(4) *Notes, secured and unsecured.*—The value of notes, whether secured or unsecured, will be presumed to be the amount of unpaid principal, plus accrued interest to the date of decedent's death, unless the executor establishes the right to return them at a lower value, or as worthless. To establish such a right it must be shown by satisfactory evidence that the note, either in whole or in part, is uncollectible by reason of the insolvency of the party or parties liable, or for other cause, and that the property, if any, pledged or mortgaged as security is insufficient to satisfy it.

(5) *Cash on hand or on deposit.*—The amount of cash belonging to the decedent, either in his possession at the date of death or in the possession of another, should be included. Bank accounts should be returned in the amount on deposit to the credit of the decedent at the date of death. If checks then outstanding, given in discharge of bona fide, legal obligations of the decedent, and not as transfers coming within the provisions of section 402 (c), are subsequently honored by the bank and charged to the account, the balance remaining may be returned, provided the payments effected thereby are not claimed as deductions from the gross estate. Interest which the bank agreed to pay upon condition that the money remain on deposit for a period of time which expired subsequent to the decedent's death, should not be included.

(6) *Patents, trade-marks, and copyrights.*—The basis for valuation of an intangible asset of this character is the present worth of the estimated future earnings of the exclusive right during the rest of its existence. The return received by the decedent should be considered in estimating future earnings.

(7) *Accounts receivable, claims, judgments, etc.*—A fair valuation for assets of this character at the time of death should be fixed by the executor according to the best information available to him at the time of making return. A right of action which terminated with the death of the decedent should not be included in the gross estate.

(8) *Other property.*—With respect to all other property, excepting household and personal effects, concerning which see paragraph (9) of this article, the executor should ascertain and return the fair market value thereof as of the day of decedent's death. As to property sold subsequent to death, see Article 13. Live stock, farm machinery, harvested and growing crops, where of an aggregate value of \$2,000 or more, should be valued, as of the date of decedent's death, by one or more competent and disinterested appraisers, and their itemized appraisal thereof in writing, verified by the oath of each, should be filed in duplicate with the return on Form 706. The executor should also file in duplicate with the return his affidavit as to the completeness of the itemized lists of such property and of the disinterested character and qualifications of the appraiser or appraisers.

(9) *Household and personal effects—General provisions.*—Executors and administrators are required to have careful appraisal made of all household and personal effects of the decedent by one or more competent and disinterested appraisers, except as otherwise provided in subdivision (a) of this paragraph, and the appraisal thereof, reduced to writing and verified by the oath or oaths of the appraiser or appraisers, should be filed in duplicate with the return on Form 706, accompanied by the affidavit in duplicate of the executor as to the completeness of the itemized lists of such property and of the disinterested character and qualifications of the appraiser or appraisers. Where it is desired to effect distribution or sale of any portion of such property in advance of an investigation by a special officer of the Bureau of Internal Revenue, as provided in Article 72, notice thereof should be given to the Internal Revenue Agent in Charge for the Division wherein the decedent was domiciled at the date of his death, or, if such household and personal effects be not located in such Division, then to the Commissioner. If the return has not been filed, the notice should be accompanied by a verified appraisal of such property, and an affidavit of the executor as provided above. If personal inspection by a special officer of the Bureau is not deemed necessary, the executor will be so advised. This procedure is designed to facilitate disposition of such property and to obviate future expense and inconvenience to the estate by affording the Commissioner an opportunity to make an investigation, should one be deemed necessary, prior to the sale or distribution. (For location of the offices of the several Internal Revenue Agents in Charge, and the territory embraced in their Divisions, respectively, see Appendix.)

(a) *When value is less than \$2,000.*—When the value of the personalty involved is less than \$2,000, the detailed lists may be prepared by the executor personally. A room by room appraisal is desirable; and all the articles should be named specifically, except those of small value, such as common bric-a-brac or cheap books. A separate value should be given for each article named, except that the values of a number of articles contained in the same room may be grouped. The value of an article worth more than \$50 should be stated separately. Such an entry as the following would be acceptable:

Dining room: Table, six chairs, three pictures (common prints), value \$75; sideboard, \$60; total, \$135.

If there should be included in the lot, however, jewelry or silverware of more than ordinary value, or articles having a marked artistic value, the executor must furnish an appraisal by a person or persons thoroughly qualified by training and experience to judge of the value of such articles.

In the case of effects having a total value of less than \$2,000, the executor may furnish, as an alternative requirement, a sworn statement in duplicate of the aggregate total value of the property by a professional appraiser or appraisers of recognized standing and ability, or by a dealer or dealers in the class of personalty involved.

(b) *When value is more than \$2,000.*—When the value of the effects is more than \$2,000, detailed lists must be furnished, prepared by an appraiser or appraisers of recognized competence, or by a dealer or dealers in the particular classes of personalty involved. The lists must be prepared in the same detail as that indicated above for the executor's list. Where the personalty includes jewelry, silverware, or like articles, except in cases where the value of these items is insignificant, the appraisal of a reputable dealer or appraiser of jewelry must be furnished.

In the case of articles having marked artistic value, such as paintings, engravings, etchings, statuary, vases, oriental rugs, or antiques, the appraisal of an expert or experts will be required. A description of such articles should be fully given. Where paintings having artistic value are listed, the size, subject, and artist's name should be stated. In the case of oriental rugs, the size, make, and general condition should be given. The weight in ounces of silverware should be stated.

(c) *Appraisers and basis of appraisals.*—Where expert appraisers are to be employed, care should be taken to see that they are men of recognized competence with respect to the particular class of property involved. In order to facilitate the acceptance of the appraisal, appraisers should be employed whose competence is well established.

The value to be arrived at in appraising articles of this character is the fair market value on date of decedent's death. Where property is valued by legatees for purposes of distribution, such value will not necessarily be accepted. The original cost of the articles is not necessarily a proper basis, on account of depreciation or appreciation in value.

ART. 15. *Valuation of annuities, and of life and remainder interests.*—Where the decedent was entitled to receive an annuity of a definite amount during the lifetime of another person, its present worth at the time of the decedent's death must be computed upon the basis of the expectancy of life of the other person. The table marked "A," a part of this article, should be used for this computation. The amount payable annually should be multiplied by the figure in column 2 of the table opposite the number of years in column 1 nearest to the actual age of the other person.

Example: The decedent received under the terms of his father's will an annuity of \$10,000 for the life of his elder brother. The

brother at the decedent's death was 40 years 8 months old. By reference to the table the figure in column 2 opposite 41 years, the number nearest to the brother's age, is found to be 14.86102. The present worth of the annuity is therefore \$148,610.20.

Where the decedent was entitled to receive the annuity during a specified number of years, the table marked "B," a part of this article, should be used.

Example: The decedent received under the terms of his father's will an annuity of \$10,000 for a period of 20 years, 15 of which had expired at the decedent's death. By reference to the table it is found that the figure in column 2 opposite 5 years, the unexpired portion of the 20-year period, is 4.45182. The present worth of the annuity is, therefore, \$44,518.20 (4.45182 multiplied by 10,000).

Where the decedent was entitled to receive the entire income of certain property during the life of another person, or for a term of years, and the annual rate of income for a period equal to or exceeding the life expectancy of such other person or such term of years, is fixed or definitely determinable at the time of the decedent's death, then the present worth of decedent's right to such income should be computed as explained above in the case of an annuity.

Example: The decedent's father placed \$100,000 in trust, with directions that it be invested in state and municipal bonds and the entire income paid to the decedent during the life of his elder brother, who was 41 years old at the decedent's death. Before the decedent's death the money was invested in state and municipal bonds maturing at dates beyond such elder brother's life expectancy, and yielding annually an income of \$5,000. In this case the rate of income is definitely determinable. By reference to the table, it is found that the present worth of an income of \$5,000, dependent upon the life of a person 41 years of age, is \$74,305.10 (14.86102 multiplied by 5,000).

Where the rate of annual income is not determinable, or where the decedent was entitled merely to the personal use of nonincome-bearing property, a hypothetical annuity at a rate of 4 per cent of the value of the property should be made the basis of the calculation.

Example: The decedent died before a fund of \$100,000, of which he was entitled to receive the income during the life of a person 41 years old, had been invested by the trustees. The value of a hypothetical annuity of \$4,000, dependent upon the life of such a person, is indicated by the table to be \$59,444.08 (14.86102 multiplied by 4,000).

Where the decedent had a remainder interest in property subject to the life estate of another, and such interest constituted an asset of his estate, the present worth of the remainder interest at the time of death should be obtained by multiplying the value of the property at the time of death by the figure in column 3 of Table A opposite

the number of years nearest to the age of the life tenant. Where the remainder interest is subject to an estate for a term of years Table B should be used.

Example: The decedent was entitled to receive property worth \$50,000 upon the death of his elder brother, to whom the income for life had been bequeathed. The brother at the time of the decedent's death was 31 years old. By reference to the table it is found that the figure in column 3 opposite 31 years is 0.31262. The present worth of the remainder interest is, therefore, \$15,631.

TABLE A.

Table, single life, 4 per cent, showing the present worth of an annuity, or life interest, and of a reversionary interest.

1	2	3	1	2	3
Age.	Annuity, or present value of \$1 due at the end of each year during the life of a person of specified age.	Reversion, or present value of \$1 due at the end of the year of death of a person of specified age.	Age.	Annuity, or present value of \$1 due at the end of each year during the life of a person of specified age.	Reversion, or present value of \$1 due at the end of the year of death of a person of specified age.
0	<i>Annuity.</i> \$14. 72829	<i>Reversion.</i> \$. 39507	51	\$12. 17919	\$0. 49311
1	17. 30771	. 29586	52	11. 88408	. 50446
2	18. 69578	. 24247	53	11. 58531	. 51595
3	19. 15901	. 22465	54	11. 28325	. 52757
4	19. 41226	. 21491	55	10. 97789	. 53931
5	19. 55301	. 20950	56	10. 60982	. 55116
6	19. 61731	. 20703	57	10. 35931	. 56310
7	19. 62502	. 20673	58	10. 04630	. 57514
8	19. 61097	. 20727	59	9. 73131	. 58726
9	19. 53413	. 21022	60	9. 41474	. 59943
10	19. 45359	. 21332	61	9. 09765	. 61163
11	19. 36943	. 21656	62	8. 78052	. 62383
12	19. 28184	. 21993	63	8. 46412	. 63600
13	19. 19065	. 22344	64	8. 14888	. 64812
14	19. 09590	. 22708	65	7. 83552	. 66017
15	18. 99764	. 23086	66	7. 52476	. 67212
16	18. 89569	. 23478	67	7. 21699	. 68397
17	18. 79010	. 23884	68	6. 91298	. 69565
18	18. 68070	. 24305	69	6. 61301	. 70719
19	18. 56751	. 24740	70	6. 31716	. 71857
20	18. 45038	. 25191	71	6. 02612	. 72976
21	18. 32932	. 25656	72	5. 74003	. 74077
22	18. 20416	. 26138	73	5. 45928	. 75157
23	18. 07471	. 26636	74	5. 18402	. 76215
24	17. 94097	. 27150	75	4. 91463	. 77251
25	17. 80274	. 27682	76	4. 65125	. 78264
26	17. 65984	. 28231	77	4. 39383	. 79254
27	17. 51224	. 28799	78	4. 14286	. 80220
28	17. 35968	. 29386	79	3. 89858	. 81159
29	17. 20225	. 29991	80	3. 66071	. 82074
30	17. 03961	. 30617	81	3. 42900	. 82965
31	16. 87176	. 31262	82	3. 20258	. 83836
32	16. 69846	. 31929	83	2. 98024	. 84691
33	16. 51964	. 32617	84	2. 76106	. 85534
34	16. 33503	. 33327	85	2. 54366	. 86371
35	16. 14437	. 34060	86	2. 32795	. 87200
36	15. 94755	. 34817	87	2. 11384	. 88024
37	15. 74427	. 35599	88	1. 90115	. 88842
38	15. 53421	. 36407	89	1. 69107	. 89650
39	15. 31722	. 37241	90	1. 48540	. 90441
40	15. 09295	. 38104	91	1. 28432	. 91214
41	14. 86102	. 38996	92	1. 09024	. 91981
42	14. 62122	. 39918	93	. 90647	. 92767
43	14. 37356	. 40871	94	. 73687	. 93520
44	14. 11860	. 41852	95	. 58435	. 94306
45	13. 85713	. 42857	96	. 46182	. 94378
46	13. 58958	. 43886	97	. 36698	. 94742
47	13. 31698	. 44935	98	. 24038	. 95229
48	13. 03942	. 46002	99	. 00000	. 96154
49	12. 75716	. 47088			
50	12. 47032	. 48191			

Table, single life, 4 per cent, showing the present worth of an annuity, or life interest, and of a reversionary interest—Continued.

TABLE B.

1	2	3	1	2	3
Number of years.	Present worth of an annuity of \$1, payable at the end of each year, for a certain number of years.	Present worth of \$1, payable at the end of a certain number of years.	Number of years.	Present worth of an annuity of \$1, payable at the end of each year, for a certain number of years.	Present worth of \$1, payable at the end of a certain number of years.
	<i>Annuity.</i>	<i>Reversion.</i>		<i>Annuity.</i>	<i>Reversion.</i>
1	\$0.96154	\$0.961538	16	\$11.65229	\$0.533908
2	1.89609	.924556	17	12.16567	.513373
3	2.77509	.888996	18	12.65929	.493628
4	3.62989	.854804	19	13.13394	.474642
5	4.45182	.821927	20	13.59032	.456387
6	5.24214	.790314	21	14.02916	.438884
7	6.00205	.759918	22	14.45111	.421955
8	6.73274	.730690	23	14.85684	.405726
9	7.43533	.702687	24	15.24696	.390121
10	8.11089	.675564	25	15.62208	.375117
11	8.76047	.649581	26	15.98277	.360689
12	9.38507	.624597	27	16.32953	.346816
13	9.98565	.600574	28	16.66306	.333477
14	10.56312	.577475	29	16.98371	.320651
15	11.11839	.555265	30	17.29203	.308319

GROSS ESTATE—DOWER AND CURTESY.

(Sec. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—)

(b) To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower, curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy;

ART. 16. Dower and curtesy.—This provision includes dower and curtesy and all interests created by statute in lieu thereof, although the estate or interest so created is different in character. The effect of the provision is to require the inclusion of the full value of the property, without deduction of the value of the interest of the surviving husband or wife. This rule does not apply to the estate of any decedent dying after September 8, 1916, and prior to 6.55 p. m., February 24, 1919 (the effective date of Title IV of the Revenue Act of 1918), unless the property has its situs in a jurisdiction wherein dower, curtesy, or the statutory interest in lieu thereof is subject to the payment of charges against the estate, the expenses of its administration, and is subject to distribution as part of the estate, or unless there has been an election to take property devised or bequeathed in lieu of dower, curtesy, or such statutory interest, and the property so taken has its situs in a jurisdiction by the laws of which it is subject to the payment of such charges and expenses, and to distribution as a part of the estate.

GROSS ESTATE—TRANSFERS BY DECEDENT IN HIS LIFETIME.

(SEC. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—)

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has at any time created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death (whether such transfer or trust is made or created before or after the passage of this Act), except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;

ART. 17. *Nature and time of transfer.*—A transfer made by the decedent at any time, and in any manner, is taxable when made in contemplation of or intended to take effect in possession or enjoyment at or after his death, provided it was not a *bona fide* sale for a fair consideration in money or money's worth. To constitute such a sale it must have been made in good faith, and the price must have been a fair equivalent, and reducible to a money value. The value of property, where title was so transferred by the decedent before September 9, 1916, is to be included in his gross estate if his death occurred after the effective date of the Revenue Act of 1913, but is not to be included if he died prior thereto.

TRANSFERS IN CONTEMPLATION OF DEATH.

ART. 18. *Nature of transfer.*—The words "in contemplation of death" do not mean, on the one hand, a general expectation of death such as all persons entertain, nor, on the other, is the meaning limited to an expectation of immediate death. A transfer, however, is made in contemplation of death wherever the person making it is influenced to do so by such an expectation of death, arising from bodily or mental conditions, as prompts persons to dispose of their property to those whom they deem proper objects of their bounty. Such a transfer is taxable, although the decedent parts absolutely and immediately with his title to and possession and enjoyment of the property. Any transfer made by a decedent within two years prior to his death, without a fair consideration in money or money's worth, is presumed to be taxable if of a material part of his property and in the nature of a final disposition or distribution thereof. The executor must return the value, as of the date of decedent's death, of all property transferred by the decedent at any time in contemplation of death, where the transfer was not a bona fide sale for a fair consideration in money or money's worth, and must disclose in the return all transfers of a material part of decedent's property made at any time without such consideration, but need not include in the

gross estate the value of such thereof as he contends were not made in contemplation of death, in which event he may submit with the return evidence of all material facts tending to disclose the decedent's motive at the time, his then anticipation of death, and mental and physical condition.

The presumption of taxability of a transfer made within the two-year period may be rebutted by proof that it was not made under the conditions stated in the statute, and such proof must be filed with the return. Unless proof is submitted which is sufficient to rebut the presumption the transfer will be included in the gross estate in computing the tax.

The fact that a gift was made as an advancement, to be taken into account upon the final distribution of the decedent's estate, is not enough, standing alone, to establish taxability.

TRANSFERS INTENDED TO TAKE EFFECT AT OR AFTER DEATH.

ART. 19. General.—All transfers at any time made by the decedent, other than bona fide sales for a fair consideration in money or money's worth, which were intended to take effect in possession or enjoyment at or after his death, are taxable, and the value of the property so transferred, as of the date of the decedent's death, must be returned as a part of the gross estate.

ART. 20. Reservation of income.—A transfer, not amounting to a bona fide sale for a fair consideration in money or money's worth, is taxable where the decedent reserved to himself during life the income of the property transferred. In such a case the transfer of the principal takes effect in possession and enjoyment at the death of the decedent, and the value of the entire property should be included in the gross estate. Where the decedent reserved a proportionate part of the income, only a corresponding proportion of the value of the property should be included in the gross estate. If, for example, he reserved one-half of the income, the value of one-half of the property transferred should be included in the gross estate. If he reserved an annuity, so much of the property as is necessary to produce the annuity should be included in the gross estate. A transfer is taxable in accordance with these principles whether the decedent reserved the annuity out of the property conveyed, or payment thereof to him was made by the grantee upon an express or an implied agreement to that effect. Where, however, the transfer was made in contemplation of death, the full value of the transferred property, as of the date of the decedent's death, should be included in the gross estate irrespective of the amount of income or of the annuity payable to the decedent.

A gift of the principal intended to take effect either in possession or enjoyment at or after the decedent's death is taxable, although

the income during the decedent's life was payable to some one other than himself. Example: The decedent transferred property to his son, the latter agreeing to pay the income to his mother during the decedent's life. The transfer to the son is taxable.

ART. 21. Power of revocation or control.—Property held in trust under any instrument in which the decedent reserved a power of revocation, or any power which has that effect, constitutes a part of the gross estate. For example, where a decedent placed property in trust for the present benefit of his son, but reserved the power to revoke the trust at any time during his life, the value of the entire property transferred should be included in the gross estate.

ART. 22. Valuation of property transferred.—The property to be valued is the interest owned and transferred by the decedent; but the value of such property must be ascertained as of the date of the decedent's death. Where the transferee makes additions to the property, or betterments, the enhanced value of the property at that date, due to such additions or betterments, is not to be included.

GROSS ESTATE—PROPERTY HELD JOINTLY.

(SEC. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—)

(d) To the extent of the interest therein held jointly or as tenants in the entirety by the decedent and any other person, or deposited in banks or other institutions in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than a fair consideration in money or money's worth: *Provided*, That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than a fair consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further*, That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy in the entirety by the decedent and spouse, or where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of one-half of the value thereof;

ART. 23. Property held jointly or as tenants by the entirety.—The statute provides for the inclusion in the gross estate of interests held jointly by the decedent and any other person or persons, and of estates by the entirety. This class of property includes all interests, whether in real or personal property, where the survivor takes the entire property by right of survivorship, and consequently the decedent's interest therein forms no part of his estate for purposes of ad-

ministration. It does not include interests held as tenants in common, where the interest of each tenant passes free from any right of survivorship.

The following are examples of this class: Real estate held by joint tenants; real estate held by husband and wife (known as an estate by the entirety); money deposited in a bank or trust company in the joint names of the decedent and another and payable to either or the survivor; and, in general, all securities and other personal property, where the title thereto was vested in the decedent and one or more other persons, subject to the right of survivorship.

ART. 24. **Taxable portion.**—The entire value of such property is *prima facie* a part of the decedent's gross estate, but as it is not the intent of the statute that there should be so included a greater part or proportion thereof than is represented by an outlay of funds, which, in the first instance, were decedent's own, or more than a fractional part equal to that of the other joint owner where neither had parted with any consideration in its acquirement, facts, which in a given case bring it within any one of the exceptions enumerated in the statute, may be submitted by the executor.

Whether the value of the entire property, or only a part, or none of it, enters into the make-up of the gross estate, depends upon the following considerations: (1) So much of the property (whether the whole, or a part thereof) as originally belonged to the other joint owner, and which at no time in the past had been received or acquired by the latter from the decedent for less than a fair consideration in money or money's worth, forms no part of the decedent's gross estate. (2) Where the facts are otherwise the same as in (1), but the decedent paid to such other joint owner a consideration for the interest by him (the decedent) acquired in the property, then such portion of the value of the property, proportionate to the consideration so paid, constitutes a part of the gross estate. (3) Where the property, or a part thereof, or a part of the consideration wherewith it was acquired, had at any time been acquired by the other joint owner from the decedent as a gift, or for less than a fair consideration in money or money's worth, then such portion of the value of the entire property, proportionate to the consideration, if any, which in the first instance was paid from such other joint owner's own funds, forms no part of the gross estate. (4) Where the property was acquired by the decedent and his or her surviving spouse as tenants in the entirety by gift, will, or inheritance, then but one-half of the value of the property becomes a part of the gross estate. (5) Where acquired by the decedent and the other joint owner as joint tenants by gift, will, or inheritance, and their interests are not otherwise specified, or fixed by law, then one-half only of the value of the property is a part

of the gross estate; or, where so acquired by the decedent and two or more persons, and the interests of the several joint tenants are not otherwise determinable, then the decedent and the other joint tenants surviving him shall each be deemed the owner of an equal fractional part, and the value of one only of such fractional parts is to be included in the gross estate.

The following are given as illustrative: (a) The decedent may have furnished the entire purchase price, in which case the value of the entire property should be included in his gross estate; (b) the decedent may have furnished a part only of the purchase price, in which case only the value of a corresponding portion of the property should be so included; (c) the decedent, prior to acquisition of the property by himself and the other joint owner, may have given to the latter a sum of money which later constituted such other joint owner's entire contribution to the purchase price of the property, in which case the entire value of the property should be included; (d) the other joint owner, at a date prior to the acquirement of the property, may have acquired from the decedent, for less than a fair consideration in money or money's worth, property which thereafter became as such, or in a converted form, part of the purchase price of the property. In such a case, the value of the property to be included is to be reduced proportionately to the consideration furnished by the other joint owner in the original transaction; (e) the decedent may have furnished no part of the purchase price, in which case no part of the property should be included; (f) the decedent and spouse may have acquired the property by will as tenants by the entirety, in which case one-half of the value of the property should be included.

GROSS ESTATE—PROPERTY PASSING UNDER POWER OF APPOINTMENT.

(SEC. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—)

(e) To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for a fair consideration in money or money's worth; and

ART. 25. General rules.—The value of all property passing under a general power of appointment must be included in the gross estate of the person exercising the power (known as the donee, or appointor) where the power is exercised by will. It should also be so included when the power is exercised by deed or other instrument executed in contemplation of, or intended to take effect in posses-

sion or enjoyment at or after, the death of the donee of the power. The statute, however, does not require inclusion within the gross estate of the value of the appointed property in the case of a bona fide sale thereof by the donee of the power for a fair consideration in money or money's worth.

Only property passing under a *general* power should be included. A general power is one to appoint to any person or persons in the discretion of the donee of the power. Where the donee is required to appoint to a specified person or class of persons, the property should not be included in his gross estate. Property appointed under a general power should be so included, although the persons to whom the appointment was made would have taken the property had the power not been exercised. A copy of the instrument granting the power should be filed with Form 706 in all cases in order that the Commissioner may determine whether the power is general or special.

Example: The income of property is left to a person for life, with the right to name in his will the person who shall receive the property upon his death. He exercises this power in his will. Upon his death, the value of the property so appointed should be included in his gross estate.

ART. 26. Powers exercised before and after February 24, 1919.—The provisions of the Revenue Act of 1918, and those of the present statute, respecting transfers effected through the exercise of a general power of appointment are identical, hence, subject to the exception stated in the preceding article, namely, where the appointment was made for a fair consideration in money or money's worth, the value of all property so transferred by the decedent in the exercise of such a power must be included in the gross estate, if his death occurred subsequent to 6.55 p. m., February 24, 1919 (the effective date of the Revenue Act of 1918). Where, however, the decedent died prior to the effective date of the Revenue Act of 1918, the value of the appointed property is not to be so included.

GROSS ESTATE—INSURANCE.

(Sec. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—)

(f) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over \$40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life.

ART. 27. Taxable insurance.—The statute provides for the inclusion in the gross estate of certain forms of insurance taken out by the decedent upon his own life. Two kinds of insurance are taxable: (a) all insurance receivable by, or for the benefit of, the estate;

(b) all other insurance to the extent that it exceeds in the aggregate \$40,000. The term "insurance" refers to life insurance of every description, including death benefits paid by fraternal beneficial societies, operating under the lodge system. Insurance is deemed to be taken out by the decedent in all cases where he pays the premiums, either directly or indirectly, whether or not he makes the application. On the other hand, the insurance is not deemed to be taken out by the decedent, even though the application is made by him, where the premiums are actually paid by the beneficiary, who may be either a person or a corporation. Where the decedent takes out insurance in favor of another person or corporation, as collateral security for a loan or other accommodation, and either directly or indirectly, pays the premiums thereon, the insurance must be considered in determining whether there is an excess over \$40,000. The amount of the loan outstanding at decedent's death, with interest accrued thereon to that date, will be deductible in determining the net estate. (See Art. 39.) Where the decedent assigns a policy, and retains no interest therein, and thereafter pays no part of the premiums, the insurance will not be considered in determining whether there is such an excess.

ART. 28. Insurance in favor of the estate.—The provision requiring the inclusion in the gross estate of all insurance receivable by the executor, without any deduction, applies to policies made payable to the decedent's estate or his executor or administrator, and all insurance which is in fact receivable by, or for the benefit of, the estate. It includes insurance taken out to provide funds to meet the estate tax, and any other taxes or charges which are enforceable against the estate. The manner in which the policy is drawn is immaterial so long as there is an obligation, legally binding upon the beneficiary, to use the proceeds in payment of such taxes or charges.

ART. 29. Insurance receivable by other beneficiaries.—The estate is entitled to only one exemption of \$40,000 upon insurance receivable by beneficiaries other than the estate. For example, if the decedent left life insurance payable to three such beneficiaries in amounts of \$10,000, \$40,000, and \$50,000 (total, \$100,000), the amount of \$60,000 should be returned for taxation, which is the excess of the sum of the three policies over the exempted amount. The word "beneficiaries," as used in reference to the \$40,000 exemption, means persons entitled to the actual enjoyment of the insurance money.

ART. 30. Effective date of insurance provisions.—Insurance receivable by the estate must be included in the gross estate of all decedents who died after September 8, 1916. Insurance payable to beneficiaries other than the estate, however, need not be included in the gross estate of decedents who died before the effective date of Title IV of

the Revenue Act of 1918, unless the insurance was originally payable to the estate, and the policy was thereafter assigned, or made payable, to a specific beneficiary in contemplation of, or intended to take effect in possession or enjoyment at or after the decedent's death; such assignment or change in beneficiary not being for a fair consideration in money or money's worth.

ART. 31. Valuation of insurance.—The amount to be returned in the case of any policy is the amount receivable by the estate or other beneficiary. In cases where the proceeds of a policy are made payable to the beneficiary in the form of an annuity for life or for a term of years, the present worth of the annuity at the time of death should be included in the gross estate. For the method of computing the value of such an annuity, see Article 15. Where the insurance contract gives an option to receive a fixed sum of money in lieu of an annuity, this sum, if accepted, represents the value of the insurance for the purpose of the tax. If such sum is not accepted the value of the annuity is to be included in the gross estate. Where there is more than one option, and none of them is convertible, the value of the insurance should be determined in accordance with the option actually exercised.

DEDUCTIONS—ESTATES OF RESIDENTS.

SEC. 403, That for the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages upon, or any indebtedness in respect to, property (except, in the case of a resident decedent, where such property is not situated in the United States), losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, or from theft, when such losses are not compensated for by insurance or otherwise, and such amounts reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or any estate, succession, legacy, or inheritance taxes; * * *

ART. 32. Deduction of claims, expenses, etc.—In order to be deductible under the foregoing provision of the statute, the item must fall within one of the several classes of deductions specifically enumerated therein, and must also, except in the case of deductible losses during the administration of the estate, be one the payment of which out of the estate is authorized by the laws of the jurisdiction under which the estate is being administered. Unless both of these conditions exist, the item is not deductible. Where the item is not one

of those described, it is not deductible merely because payment is allowed by the local law. Where the amount which may be expended for the particular purpose is limited by the local law, no deduction in excess of such limitation is permissible. An item may be entered on the return for deduction though the exact amount thereof is not then known, provided it is ascertainable with reasonable certainty, and will be paid. No deduction may be taken upon the basis of a vague or uncertain estimate. When an uncertain or contingent liability was undetermined at the time of audit of the return by the Commissioner, and, as a consequence, deduction was not allowed therefor in such audit, the remedy is by a claim for abatement or refund when the liability and the amount thereof becomes fixed and determined. (See Arts. 93 to 97, inclusive.)

ART. 33. Effect of court decree.—The decision of a local court as to the amount of a claim or administration expense will ordinarily be accepted where the court passes upon the facts upon which deductibility depends. Where the court does not pass upon such facts its decree will, of course, not be followed. For example, where the question before the court is whether a claim should be allowed, the decree allowing it will ordinarily be accepted as establishing that the claim is valid and the amount of it. Where, however, a legacy is left to an executor in lieu of commissions, the allowance of the legacy does not establish that the executor's claim for commissions is equal to the amount bequeathed, and that this amount is consequently deductible. (See Art. 36.) Nor will the decree necessarily be accepted even where it purports to decide the facts upon which deductibility depends. It must appear that the court actually passed upon the merits of the case. This will be presumed in all cases where there is an active and genuine contest. Where the result reached appear to be unreasonable, this is some evidence that there was not such a contest, but it may be rebutted by proof to the contrary. Where the decree was rendered by consent, it will be accepted, provided the consent was a *bona fide* recognition of the validity of the claim—not a mere cloak for a gift—and was accepted by the court as satisfactory evidence upon the merits. It will be presumed that the consent was of this character, and was so accepted, where it is made by all parties having an interest adverse to the claim, when all aspects of the matter, including its effect upon taxation, are considered. The decree will not be accepted where it appears to be at variance with the law of the state; as, for example, if an allowance is made to an executor in excess of the rate prescribed by statute.

ART. 34. Funeral expenses.—An executor may deduct such amounts for funeral expenses as are actually expended by him, provided expenditures of this nature are a liability of the estate under the

laws of the local jurisdiction. A reasonable expenditure by the executor for a tombstone, monument, mausoleum, or for a burial lot, either for the decedent or his family, may be deducted under this heading, provided such an expenditure is made a charge upon the estate by the local law. Included in funeral expenses is the cost of transportation of the person bringing the body to the place of burial.

ART. 35. Administration expenses.—The amounts deductible from the gross estate as “administration expenses” are such expenses as are actually and necessarily incurred in the administration of the estate; that is, in the collection of assets, payment of debts, and distribution among the persons entitled. The expenses contemplated in the law are such only as attend the settlement of an estate by the legal representative preliminary to the transfer of the property to individual beneficiaries or to a trustee, whether such trustee is the executor or some other person. Expenditures not essential to the proper settlement of the estate, but incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions. Administration expenses include (1) executor’s commissions; (2) attorney’s fees; (3) miscellaneous expenses. Each of these classes is considered separately. (See Arts. 36 to 38, inclusive.)

ART. 36. Executor’s commissions.—The amount deductible as executor’s or administrator’s commissions is such amount as has actually been paid or which at the time the return is filed it is reasonably expected will be paid, but no deduction will be allowed if no commissions are to be collected. Where the amount of the commissions has not been fixed by decree of the proper court, the deduction will be allowed on the final audit of the return provided: (1) That the Commissioner is reasonably satisfied that the commissions claimed will be paid; (2) that the amount entered as a deduction is within the amount allowable by the laws of the jurisdiction wherein the estate is being administered; and (3) that it is in accordance with the usually accepted practice in said jurisdiction in estates of similar size and character. Where the commissions claimed have not been awarded by the proper court the Commissioner on final audit may disallow the deduction in part or in whole, as the circumstances in his judgment justify, subject to such future adjustment as the facts may later require. If the deduction is allowed in advance of payment and payment is thereafter waived, it shall be the duty of the executor to notify the Commissioner. Executors should note that the amounts received in payment of the commissions constitute taxable income and that amounts allowed on final audit are cross-referenced for income-tax purposes.

A bequest to an executor in lieu of commissions is deductible as an administration expense in the amount that it does not exceed commissions allowable under local law and practice.

Amounts paid as trustees' commissions do not constitute expenses of administration and are not deductible, whether received by the executor acting in the capacity of a trustee or by a separate trustee as such.

ART. 37. Attorney's fees.—The amount deductible as attorney's fee is the amount actually paid as such or which at the time the return is filed it is reasonably expected will be paid. If on the final audit of a return, the fees claimed have not been awarded by the proper court and paid, the deduction will be allowed, provided that the Commissioner is reasonably satisfied that the amount claimed will be paid and that it does not exceed a reasonable remuneration for the services rendered, taking into full account the size and character of the estate and local law and practice. Where the attorney's fees have not been paid at the time of the final audit of the return, the Commissioner may disallow the deduction in part or in whole as the circumstances may warrant, subject to such future adjustment as the facts may require.

Attorney's fees incident to litigation instituted by the beneficiaries as to their respective interests do not constitute a proper deduction, inasmuch as expenses of this character are properly charges against the beneficiaries personally and are not administration expenses as contemplated by the statute.

ART. 38. Miscellaneous administration expenses.—This item includes expenses incident to court proceedings, or the administration of the estate, such as court costs, surrogates' fees, accountants' fees, appraisers' fees, clerk hire, etc. Expenses necessarily incurred in distributing the estate are deductible. This includes the cost of storing or maintaining property of the estate, where it is impossible to effect immediate distribution to the beneficiaries. Expenses for preserving and caring for the property may be deducted, but do not include additions or improvements; nor will such expenses be allowed for a longer period than the executor is required to retain the property. A brokerage fee for selling property of the estate is deductible where the sale is necessary in order to pay the decedent's debts, or the expenses of administration, or to effect distribution. Other expenses attending the sale are deductible, such as the fees of an auctioneer, where it is reasonably necessary to employ one.

ART. 39. Claims against the estate.—The amounts that may be deducted under this heading are such only as represent personal obligations of the decedent existing at the time of his death, whether then matured or not. Only such claims as are enforceable against the estate may be deducted.

ART. 40. Taxes.—Taxes upon real property should be accrued to the date of death in order to reflect in the gross estate the value of the property upon which they were imposed. This is done by ascertaining the time between the first day of the taxable period wherein the death occurs and the date of death, and computing the proportion of the entire tax upon the basis which this period bears to the entire taxable period. Such proportion of the tax had accrued upon the date of death, and is deductible.

Taxes upon personal property are either wholly deductible, or are not deductible at all, depending upon whether the tax did, or did not, become the personal obligation of the taxpayer in his lifetime. If the tax became his personal obligation during his life, the whole amount is deductible as a claim against his estate. If it did not become such personal obligation in his lifetime, no part of it is deductible. The question when the tax became the personal obligation of the taxpayer depends upon the law of the jurisdiction imposing the tax. *Prima facie*, the date when the tax became the personal obligation of the taxpayer is the date when the assessment was laid.

Federal taxes upon income received or accrued during the decedent's lifetime constitute a personal obligation of the decedent, and are deductible. Taxes upon income received after the decedent's death are not deductible. No estate, succession, legacy, or inheritance tax is deductible.

ART. 41. Unpaid mortgages.—The full amount of unpaid mortgages on property included in the gross estate should be deducted under this heading, including interest which had accrued at the time of death, whether payable at that time or not. The full value of the real estate, without any deduction for mortgages, must be returned as part of the gross estate. Real property situated outside the United States is not a part of the gross estate of a resident decedent, nor may deduction be taken of any mortgage upon, or any indebtedness in respect to, such property when owned by a resident decedent.

ART. 42. Losses from casualty or theft.—There may be deducted under this heading losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, or from theft, when such losses are not compensated for by insurance or otherwise. If the loss is partly compensated, the excess of the loss over such compensation may be deducted. Losses not of the nature described are not deductible. Losses sustained by reason of depreciation or otherwise in the value of assets of the estate subsequent to the decedent's death, when not arising from any of the causes named, are not deductible. In order to be deductible a loss must occur during

the settlement of the estate. Where property has been delivered to the beneficiary, settlement has been effected, and no deduction may be had for loss of the property.

ART. 43. Support of dependents.—The support during the settlement of the estate of dependents of the decedent should be deducted, but pursuant to the following rules:

(1) In order to be deductible, the allowance must be authorized by the laws of the jurisdiction in which the estate is being administered, and not in excess of what is reasonably required.

(2) The allowance for which deduction may be made is limited to support during the settlement of the estate. Any allowance for a more extended period is not deductible.

(3) There must be an actual disbursement from the estate to the dependents, but after payment has been made the right of deduction is not affected by the fact that the dependents do not expend the entire amount for their support during the settlement of the estate.

DEDUCTIONS—PROPERTY PREVIOUSLY TAXED.

(SEC. 403. That for the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—)

(2) An amount equal to the value of any property forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent where such property can be identified as having been received by the decedent from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received: *Provided*, That this deduction shall be allowed only where an estate tax under this or any prior Act of Congress was paid by or on behalf of the estate of such prior decedent, and only in the amount of the value placed by the Commissioner on such property in determining the value of the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate and not deducted under paragraphs (1) or (3) of subdivision (a) of this section. This deduction shall be made in case of the estates of all decedents who have died since September 8, 1916;

ART. 44. Deduction of the value of transfers taxed within five years.—Where there is included in the decedent's gross estate property received by him by gift, will, or inheritance from any person who died within five years prior to his death, or property acquired in exchange for property so received, the statute authorizes a deduction in behalf thereof, subject to the following conditions and limitations, namely:

(1) The two deaths must have occurred within five years of each other.

(2) The property must be identified either as the same which the decedent so received, or subsequently acquired in exchange therefor.

(3) The property must have formed a part of the gross estate, situated in the United States, of such prior decedent.

(4) An estate tax must have actually been paid by or on behalf of the estate of such prior decedent (the mere filing of a return for such estate not being sufficient).

(5) The property, or that acquired in exchange therefor, in so far as it constitutes a part of the decedent's gross estate, is, for the purpose of inclusion therein, to be valued as of the date of the decedent's death.

(6) The deduction, however, is limited to the value which the Commissioner placed on the property in determining the value of the gross estate of the prior decedent.

(7) The deduction is also limited to the extent that the value of the property, or that acquired in exchange therefor, is included in the decedent's gross estate. (See example following the next paragraph.)

(8) The deduction is further limited to the extent that the value of the property, or of that so acquired in exchange, is not deducted under paragraphs (1) or (3) of subdivision (a) of section 403.

Example: The decedent's father died January 1, 1917. Included in his gross estate was a tract of land comprising 200 acres upon which the Commissioner placed a value for estate tax purposes of \$20,000. The tax on the father's estate was paid. The son, having inherited the tract from his father, sold 100 acres thereof on January 1, 1920, for \$20,000, and commingled the proceeds with his other funds. On the son's death, which occurred January 1, 1921, the remaining one-half of the land was returned as a part of his gross estate at \$20,000, which was the fair market value thereof as of the date of his death. Since only one-half of the tract was included in the son's gross estate, the deduction is limited to one-half of the value placed by the Commissioner upon the whole tract when determining the value of the father's gross estate, or \$10,000.

Under the provisions of the Revenue Act of 1918 the deduction was available only where the prior decedent died after October 3, 1917, the date of the passage of the Revenue Act of 1917, and the decedent's death occurred subsequent to the effective date of the Revenue Act of 1918. But under the provisions of the Revenue Act of 1921 the right to such deduction is made available to the estates of all decedents dying since September 8, 1916. Where, under the provisions of the Revenue Act of 1918, or any prior act of Congress imposing an estate tax, the deduction was not available, the right thereto is to be determined in accordance with the provisions of paragraph (2) of subdivision (a) of section 403 of the Revenue Act of 1921, but where available under the Revenue Act of 1918, it is governed by

paragraph (2) of subdivision (a) of section 403 of that act. Where the tax has been paid without taking the deduction, a claim for refund may be made, as provided by Article 96.

The burden of proving that the estate is entitled to the deduction rests upon the executor.

ART. 45. Property originally received.—If the property originally received from the prior decedent is included in the decedent's gross estate, the executor must describe it fully, and prove its identity.

ART. 46. Property acquired in exchange.—The deduction for substituted property is limited to property acquired in exchange for the identical property received from the prior decedent. Where there is a subsequent exchange, the right to deduction is lost.

In the case of an exchange the executor must describe and identify fully both the property originally received from the prior decedent and the property acquired in exchange therefor. He must also state the date of the transaction by which the exchange was effected and the name and address of the transferee. If the exchange was made by written instrument of public record, a precise reference must be made to the record containing a transcript of the instrument, and, if by instrument not of record, a copy of the instrument itself must be supplied. If there was no written instrument, an affidavit as to the facts of the exchange by one or more persons having personal knowledge of the matter must be furnished.

DEDUCTIONS—TRANSFERS FOR PUBLIC, CHARITABLE, ETC., USES.

(SEC. 403. That for the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—)

(3) The amount of all bequests, legacies, devises, or transfers, except bona fide sales for a fair consideration in money or money's worth, in contemplation of or intended to take effect in possession or enjoyment at or after the decedent's death, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees exclusively for such religious, charitable, scientific, literary, or educational purposes. This deduction shall be made in case of the estates of all decedents who have died since December 31, 1917; * * *

In the case of any estate in respect to which the tax has been paid, if necessary to allow the benefit of the deduction under paragraphs (2) and (3) of subdivision (a) or (b) the tax shall be redetermined and any excess of tax paid shall be refunded to the executor.

ART. 47. Transfers for public, charitable, religious, etc., uses.—In the estates of decedents dying after December 31, 1917, deduction may be taken of the value of all property transferred by will, or by the decedent in his lifetime in contemplation of or intended to take effect in possession or enjoyment at or after his death (not including, however, the value of property sold for a fair consideration in money or money's worth), where, in either case, the property is, or has been, transferred (1) to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes; or (2) to or for the use of any corporation or association organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals), where no part of the net earnings of the corporation or association inures to the benefit of any private stockholder or individual; or (3) to a trustee or trustees exclusively for one or more of the purposes enumerated in (2).

Where a trust is created for both a charitable and a private purpose, deduction may be taken of the value of the beneficial interest in favor of the former only in so far as such interest is presently ascertainable, and hence severable from the interest in favor of the private use. Thus, when money or property is placed in trust to pay the income to an individual during his life, and then to pay or deliver the principal to a charitable corporation, or to apply it to a charitable purpose, the present value of the principal is deductible. For the manner of determining such value, see Article 15.

The deduction is not limited, in the estates of resident decedents, to transfers to domestic corporations or associations, or to trustees for use within the United States.

ART. 48. Religious, charitable, scientific, and educational corporations.—A corporation or association to which such a transfer was made must meet three tests: (1) it must be organized and operated for one or more of the specified purposes; (2) it must be organized and operated *exclusively* for such purpose or purposes; and (3) no part of its net earnings shall inure to the benefit of private stockholders or individuals.

The estate is not deprived of the right to deduct the value of property so transferred by reason of the fact that private individuals are the recipients of the benefits which the corporation or association dispenses. Such right is, however, lost wherever any part of the net earnings of the corporation or association inures to the benefit of a private stockholder or individual. Thus, if the shareholders or members of the corporation or association are entitled, upon a dissolution thereof, to receive the proceeds of its property, including accumulated net earnings, no right of deduction exists, even

though the by-laws provide that the shareholders or members shall not receive dividends or other return upon their shares or interests.

ART. 49. Proof required.—In order to prove the right of the estate to this deduction the executor must submit:

(1) Duplicate copies of the will of the decedent or the instrument, if any, in the case of a transfer of property in contemplation of or intended to take effect in possession or enjoyment at or after death, as required by article 69. Where copies of the will are submitted it will be sufficient if one of these copies is certified, but in such cases the collector should forward the certified copy to the commissioner.

(2) An affidavit by the executor stating whether any action has been instituted to contest the will and whether, according to his information and belief, any such action is contemplated.

(3) Such other documents or evidence as may be requested by the commissioner on review. A return will not be considered as complete within the meaning of section 407 of the act until all such evidence has been submitted.

ART. 50. Conditional bequests.—Where the transfer is dependent upon the performance of some act or the happening of some event in order to become effective, it is necessary that the performance of the act or the occurrence of the event shall have taken place before the deduction can be allowed.

Where the legatee, devisee, donee, or trustee is empowered to divert the property or fund, in whole or in part, to a use or purpose which would have rendered it, to the extent that it is subject to such power, not deductible had it been directly so bequeathed, devised, or given by the decedent, deduction will be limited to that portion, if any, of the property or fund which is exempt from an exercise of such power.

ART. 51. Effective date.—The deduction may be claimed by the estates of all decedents dying after December 31, 1917. Where the tax has been paid without taking the deduction, a claim for refund may be made, as provided by Article 96.

SPECIFIC EXEMPTION.

(SEC. 403. That for the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

(4) An exemption of \$50,000; * * *

ART. 52. Specific exemption.—There may be deducted from the gross estate of all resident decedents a specific exemption of \$50,000. No such exemption is allowed in the estates of nonresident decedents. If more than one return is made for purposes of the tax, the exemption may be taken but once.

ESTATES OF NONRESIDENTS.

SEC. 403. (b) * * * For the purpose of this title stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States, and any property of which the decedent has made a transfer or with respect to which he has created a trust, within the meaning of subdivision (c) of section 402, shall be deemed to be situated in the United States, if so situated either at the time of the transfer or the creation of the trust, or at the time of the decedent's death.

The amount receivable as insurance upon the life of a nonresident decedent, and any moneys deposited with any person carrying on the banking business, by or for a nonresident decedent who was not engaged in business in the United States at the time of his death, shall not, for the purpose of this title, be deemed property within the United States.

Missionaries duly commissioned and serving under boards of foreign missions of the various religious denominations in the United States, dying while in the foreign missionary service of such boards, shall not, by reason merely of their intention to permanently remain in such foreign service, be deemed nonresidents of the United States, but shall be presumed to be residents of the State, the District of Columbia, or the Territories of Alaska or Hawaii wherein they respectively resided at the time of their commission and their departure for such foreign service. * * *

ART. 53. Situs of property of nonresident decedents.—Bonds actually within the United States, moneys due on open accounts by domestic debtors, and stock of a corporation or association created or organized in the United States, constitute property having its situs in the United States. On the other hand, insurance upon the life of a nonresident, and moneys deposited with any person or corporation carrying on the banking business in the United States by or for a nonresident not engaged in business in the United States at the time of his death, are not to be regarded as property situated therein.

Property of which the decedent has made a transfer, or with respect to which he has created a trust, in contemplation of, or intended to take effect in possession or enjoyment at or after, death, is deemed to be situated in the United States if so situated either at the time of the transfer or the creation of the trust, or at the time of the decedent's death.

DEDUCTIONS—ESTATES OF NONRESIDENTS.

(SEC. 403. That for the purpose of the tax the value of the net estate shall be determined— * * *)

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—

(1) That proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated, but in no case

shall the amount so deducted exceed 10 per centum of the value of that part of his gross estate which at the time of his death is situated in the United States;

(2) An amount equal to the value of any property forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent where such property can be identified as having been received by the decedent from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received: *Provided*, That this deduction shall be allowed only where an estate tax under this or any prior Act of Congress was paid by or on behalf of the estate of such prior decedent, and only in the amount of the value placed by the Commissioner on such property in determining the value of the gross estate of such prior decedent, and only to the extent that the value of such property is included in that part of the decedent's gross estate which at the time of his death is situated in the United States and not deducted under paragraphs (1) or (3) of subdivision (b) of this section. This deduction shall be made in case of the estates of all decedents who have died since September 8, 1916; and

(3) The amount of all bequests, legacies, devises, or transfers, except bona fide sales for a fair consideration, in money, or money's worth, in contemplation of or intended to take effect in possession or enjoyment at or after the decedent's death, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees exclusively for such religious, charitable, scientific, literary, or educational purposes within the United States. This deduction shall be made in case of the estates of all decedents who have died since December 31, 1917.

No deduction shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section 404 the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States. * * *

In the case of any estate in respect to which the tax has been paid, if necessary to allow the benefit of the deduction under paragraphs (2) and (3) of subdivision (a) or (b) the tax shall be redetermined and any excess of tax paid shall be refunded to the executor.

ART. 54. Net estate.—The gross estate of a resident and of a nonresident are made up in the same way. In ascertaining the net estate, however, the transfer of which is subject to tax, there is a radical difference between the two cases. The net estate in the case of a resident is determined by making specified deductions from the entire gross estate, whereas the net estate in the case of a nonresident is determined by making the deductions from the value of so much of the gross estate as is situated in the United States. Thus,

in substance, the statute imposes the tax only upon the transfer of so much of the estate of a nonresident as, under the terms of the statute, had its situs in the United States. On the other hand, the estates of nonresidents are not entitled to the specific exemption of \$50,000. (See Art. 58.)

ART. 55. Deduction of claims, expenses, etc.—In estates of nonresidents, deduction from gross estate may be taken, subject to the limitations herein subsequently to be referred to, of disbursements for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, or from theft, when such losses are not compensated for by insurance or otherwise, amounts reasonably required and actually expended for the support during settlement of the estate of those dependent upon the decedent, as are allowed by the laws of the jurisdiction under which the estate is being administered. Treatment of the several deductions enumerated above will be found in Articles 32 to 43, inclusive. No deduction may be taken of any income taxes upon income received after the death of the decedent, or of any estate, succession, legacy, or inheritance taxes. It is immaterial whether the amounts to be deducted were incurred or expended within or without the United States, but certain limitations are imposed which do not apply to estates of resident decedents, namely: (1) Only that proportion of the aggregate thereof is deductible which the value of that part of the gross estate, which at the time of decedent's death was situated in the United States, bears to the value of the entire gross estate, wherever situated; and in no event may a sum be deducted in excess of 10 per centum of the value of that part of the gross estate which at the time of death was situated in the United States. (See Art. 58.) Such 10 per centum limitation does not apply to the deductions subsequently considered in Articles 56 and 57. (2) No deduction whatever may be taken unless the executor includes in the return the value at the date of the nonresident's death of that part of the gross estate not situated in the United States.

In order that the Commissioner may properly pass upon the items claimed as deductions, the executor should submit a certified copy of the schedule of liabilities, claims against the estate and expenses of administration filed under the foreign estate, succession, or death-duty act; or, if no such schedule was filed, a certified copy of the schedule of such liabilities, claims and expenses filed with the foreign court in which administration was had; or, if items of deduction allowable under section 403 (b) (1) were not included in either such schedule, or, if no such schedules were filed, then the affidavit of the foreign executor setting forth the facts relied upon as entitling the estate to the benefit of the particular deduction or deductions.

ART. 56. Deduction of value of transfers taxed within five years.—The right to deduct the value of property received by a nonresident decedent from any person dying within five years prior to his death, or of the value of property acquired in exchange for property so received, is governed by the same rules as those which apply to estates of resident decedents, subject to the two following exceptions: (1) That such right is limited to the extent that the value of the property, or of that acquired in exchange therefor, is not deducted under paragraphs (1) or (3) of subdivision (b) of Section 403; (2) That such right is not available to any extent unless the executor includes in the return the value at the time of the decedent's death of that part of the gross estate not situated in the United States. (See Arts. 44 to 46, inclusive.)

ART. 57. Deduction of value of transfers for public, charitable, religious, etc., uses.—The right to deduct the value of property transferred by nonresidents for public, religious, charitable, scientific, literary, or educational purposes is governed by the same rules as those applying to estates of resident decedents (Arts. 47 to 51, inclusive), subject, however, to the two following exceptions, namely: (1) That the right is limited to transfers to corporations and associations created or organized in the United States, or to trustees for use within the United States, and, (2) is then available only where the executor includes in the return the value at the time of the nonresident decedent's death of that part of the gross estate not situated in the United States.

ART. 58. Determination of net estate.—The following example will show the manner of determining the net estate of a nonresident decedent. The gross estate, wherever situated, amounts to \$1,000,000, of which \$200,000 represents the value of the property having its situs within the United States (the term "United States" including not only the several States, but also the Territories of Alaska and Hawaii, and the District of Columbia). The funeral expenses, administration expenses, and claims against the estate aggregate \$75,000, and there are charitable bequests, for use within the United States, amounting to \$25,000. Hence the property situated within the United States constitutes 20 per cent of the entire gross estate wherever situated, and a like percentage of the \$75,000 is \$15,000. As the last named amount does not exceed 10 per cent of the value of the property situated in the United States, the whole thereof is deductible. The following result is accordingly obtained:

Gross estate within the United States.....	\$200, 000
20 per cent of \$75,000.....	\$15, 000
Charitable bequests for use within the United States.....	25, 000
	<hr/> 40, 000
Net estate.....	160, 000

For the manner of computing the tax on the net estate, see Article 8.

In the example given, had the funeral expenses, administration expenses and claims against the estate aggregated \$150,000, 20 per cent thereof, or, \$30,000, would not have been deductible for the reason that it would have exceeded 10 per cent of the value of the property situated in the United States; such 10 per cent being the maximum permitted by the statute. The deduction would accordingly have been limited to 10 per cent of \$200,000, plus the charitable bequests, or a total of \$45,000, and the resultant net estate would have been \$155,000, instead of the amount given in the example.

ART. 59. Payment of tax.—The provisions relating to rates and payment of the tax are the same in estates of nonresidents and of residents. The statute provides that the executor shall pay the tax. If no executor or administrator has been appointed, every person in either the actual or constructive possession of any property of the decedent is constituted by the statute an executor for the purpose of tax payment, and is liable for the tax to the extent of the property so in his possession. All checks, drafts, or money orders should be made payable to the order of Collector of Internal Revenue. (See Arts. 79 to 83, inclusive.)

PRELIMINARY NOTICE—ESTATES OF RESIDENTS.

* SEC. 404. That the executor, within two months after the decedent's death, or within a like period after qualifying as such, shall give written notice thereof to the collector. * * *

ART. 60. When notice required.—A preliminary notice is required to be filed in the case of every resident decedent whose gross estate exceeded \$50,000 in value at date of death. This notice must be filed in duplicate with the collector in whose district the decedent had his domicile at the time of death. Where there is doubt as to whether the gross estate exceeds \$50,000, the notice should be filed, as a matter of precaution, in order to avoid penalties.

ART. 61. Notice by executor or administrator.—The duly qualified executor or administrator is required to file such preliminary notice on Form 704, copies of which may be obtained from the collector, within two months after qualifying as such, if notice has not already been filed. The primary purpose of the notice is to advise the Government of the existence of taxable estates, and filing should not be delayed beyond the two-months period because of uncertainty as to the exact value of the assets. Since the filing of the notice within the prescribed period is mandatory, the estimate of the gross estate called for by the notice is merely the best approximation of value which can be made within the time allowed. The instructions upon the back of the form should be read carefully before executing the

notice. The signature of one executor or administrator upon Form 704 is sufficient. For penalties for delinquency in filing notice, or for filing a false or fraudulent notice, see Articles 88 to 90, inclusive.

ART. 62. Notice by others than duly qualified executor or administrator.—The term “executor” embraces any person in actual or constructive possession of any property of the decedent at the time of the latter’s death, where there is no duly qualified executor or administrator. The notice on Form 704 must be filed by such persons in every case where an executor or administrator has not duly qualified as such within two months next following the decedent’s death. Where, however, an executor or administrator qualifies within such period, the duty of filing the notice devolves upon him, and all other persons are relieved therefrom.

ART. 63. Exemption claimed on account of military service; notice required.—The executors of estates claiming the right to exemption from the tax under the provisions of Section 401 (see Art. 9), are required to file the two-months notice with the proper collector in the same manner as the executors of taxable estates. The executor should, in addition, write across the face of the form the words “Exemption claimed on account of military service.”

NOTICE—ESTATES OF NONRESIDENTS.

ART. 64. Estates of nonresidents; preliminary notice.—In estates of nonresidents, notice on Form 705 should be filed with the Commissioner of Internal Revenue, Washington, D. C., by every duly qualified executor or administrator. The notice is necessary if any part of the decedent’s gross estate was situated in the United States at the time of death, regardless of the value of that part or of the entire gross estate. If no executor or administrator has been appointed, notice must be filed within two months after the date of death by every person in either the actual or constructive possession of any property of the decedent within the United States at the time of his death. If such person has no knowledge of the decedent’s death within two months following its occurrence, he should file the notice immediately upon obtaining such knowledge. If there is a delay of more than two months after the death in the appointment of an executor or administrator, persons so in possession should file notice. The term “person in actual or constructive possession of any property of the decedent” (Section 400) includes, among others, the decedent’s agents and representatives; safe-deposit companies, warehouse companies, and similar custodians of property in this country of a nonresident decedent; brokers holding as collateral securities belonging to the decedent or investment funds owned by the decedent, and debtors of the decedent in this country, but does not

include any person, corporation, or association carrying on the banking business with whom or with which money was deposited by or for the decedent, unless, however, the decedent was engaged in business in the United States at the time of his death.

ART. 65. Transfer agents' notice.—A notice on Form 714 is required to be filed whenever a corporation, its transfer agent, registrar, or paying agent, is called upon to make a transfer of stock or bonds, or to pay dividends or interest, to any successor in interest of a nonresident stockholder or bondholder who died after September 8, 1916, unless the transfer is made upon the order of an executor or administrator appointed in the United States. The notice is required for dividends declared, and for interest which had accrued on bonds, prior to the death of the decedent, although payable thereafter. Notice should be filed with the Commissioner of Internal Revenue at Washington, D. C., within two months following the date of death, or immediately upon receipt of the request for transfer or payment. A transfer agent should be vigilant to report all cases in which the fact of the death of a nonresident appears. Where the securities are received without the personal assignment of the decedent, but with the transfer order of the foreign executor, it is clear that the case should be reported. Where the securities bear the personal assignment of the decedent, the transfer should be reported if made upon the order of a foreign executor, or if information is received in any other manner that the record owner has died a nonresident of the United States.

In order to prevent loss of the tax upon nonresident estates, it is essential that transfer agents exercise great care in reporting all transfers of the kind described. Their records will be examined from time to time by internal-revenue officers to determine whether this regulation is being strictly complied with. Failure to file notice in the manner prescribed will render the transfer agent liable to a fine.

ART. 66. Transfer of stocks and bonds of nonresident decedents; how made.—Wherever a transfer agent is required to file the notice as provided in Article 65, he shall not make transfer of any stocks or bonds standing in the name of a nonresident decedent until there has been delivered to such collector of internal revenue as may be designated by the Commissioner the bond of the party to whom the stocks or bonds are to be transferred with corporate surety in an amount to be fixed by the Commissioner, not exceeding in amount the value of the stocks or bonds to be transferred, conditioned for the payment of the tax upon the transfer of the decedent's net estate. Upon receipt of such notice the Commissioner will at once, upon request, fix the amount for which the bond is to be given. In lieu of such bond

a deposit, either of money or of bonds of the United States, of the amount so fixed may be made with such collector of internal revenue as the Commissioner may designate.

Where bonds of the United States or moneys are deposited in lieu of the delivery of such corporate bond, return will be made thereof to the depositor after payment in full of the tax on the transfer of the decedent's net estate. If, however, the tax be not paid in full on or before the due date thereof, or within such period as payment may have been extended by the Commissioner, the collateral will be subjected to payment of the tax, or the then unpaid balance thereof, and the excess of the deposit, or of the proceeds thereof remaining, if any, will be returned to the depositor. In lieu of the provisions and restrictions hereinbefore set forth, transfer agents are authorized to make transfer of stocks and bonds standing in the name of a non-resident decedent to the duly qualified ancillary executor or administrator within the United States, provided that such transfer agent at the time of making such transfer gives notice thereof in writing to the Commissioner of Internal Revenue.

THE RETURN—ESTATES OF RESIDENTS.

SEC. 404. * * * The executor shall also, at such times and in such manner as may be required by regulations made pursuant to law, file with the collector a return under oath in duplicate, setting forth (a) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident, of that part of his gross estate situated in the United States; (b) the deductions allowed under section 403; (c) the value of the net estate of the decedent as defined in section 403; and (d) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

Return shall be made in all cases where the gross estate at the death of the decedent exceeds \$50,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate. The Commissioner shall make all assessments of the tax under the authority of existing administrative special and general provisions of law relating to the assessment and collection of taxes.

ART. 67. **When return required.—Date of filing.**—A return on Form 706 is required in the case of every resident decedent whose gross estate, as defined in the statute, exceeded \$50,000 in value. This return must be filed with the collector for the district in which the decedent was domiciled at the time of his death. It must be filed in duplicate within one year after the date of death. When the due date for filing

the return, Form 706, falls on a Sunday or on a legal holiday, the due date for filing will be the day following such Sunday or legal holiday.

If it is impossible for the executor to file a reasonably complete return within one year from the date of death, the Commissioner may, upon application from the executor showing good and sufficient cause, grant extensions of time not to exceed a total of 180 days from the due date, and no single extension to exceed 60 days. At the expiration of the last extension period granted, a return as complete as possible must be filed, and the executor may thereafter file an amended return when the condition of the estate permits. An extension of time for filing the return does not operate to extend the time for the payment of the tax, which is due one year after the decedent's death unless an extension of time in which to make payment has been obtained as provided in article 82.

ART. 68. Persons liable for return.—The statute provides that the duly qualified executor or administrator shall file the return. If there is more than one executor or administrator, the return must be made jointly by all. Where no executor or administrator has been appointed, every person in actual or constructive possession of any property of the decedent is constituted by the statute an executor for the purposes of the tax, and is required to make and file a return as provided by Section 404. Where, in any case, the executor is unable to make a complete return as to any part of the gross estate, he is required to give all the information he has as to such property, including a full description, and the name of every person holding a legal or beneficial interest in the property. Where the executor is unable to make a return as to any property, the statute requires every person holding a legal or beneficial interest therein, upon notice from the collector, to make return as to such part of the gross estate. For penalties for delinquency in filing return, or for filing a false or fraudulent return, see Articles 88 to 90, inclusive.

ART. 69. Preparation of return.—The return must be made on Form 706, copies of which will be supplied by the collector. It must contain an itemized inventory, by schedule, of the property constituting the gross estate, and of the deductions. The instructions printed on the form should be carefully followed. All documents and vouchers used in preparing the return should be retained by the executor, so as to be available for inspection whenever required. Duplicate certified copies of the will, if any, must be submitted with the return, together with duplicate copies of the other documents required by the instructions printed on the form, or any documents which the executor may desire to submit with the return in explanation thereof.

ART. 70. Supplemental data.—The statute provides that the executor, in addition to filing notice and return, shall furnish such supple-

mental data as may be necessary to establish the correct tax. It is therefore the duty of the executor to furnish upon request copies of any documents in his possession relating to the estate, or on file in any court having jurisdiction over the estate, appraisal lists of any items included in the gross estate, copies of balance sheets or other financial statements relating to the value of stock, and any other information obtainable by him that may be found necessary in the determination of the tax. Failure to comply with such a request will render the executor liable to a fine not to exceed \$500, and proceedings may be instituted in the proper United States court to secure compliance therewith. (See Sections 410 and 404.)

ART. 71. Procedure where no return has been made.—Section 405 of the statute provides that if no return is filed for the estate of a decedent, or if a return contains a false or incorrect statement of a material fact, the collector or deputy collector shall make a return. The Commissioner may amend this return from such knowledge or information as he can obtain, through testimony or otherwise. A return so made by the Commissioner, or made by the collector or deputy collector, is a sufficient basis for assessing the tax. Where a tax is found to be due upon such a return, both the estate and the executor will be liable for penalties as well as for the tax.

ART. 72. Investigation of returns.—An investigation of every return for estate tax will be conducted to verify its accuracy. The investigation will be made by special officers of the Bureau. The fact that an investigation is made does not reflect upon the competence or good faith of the executor, since investigations are required in all cases. The executor should cooperate with the examining officer in order that the tax liability may be correctly determined and the case closed. During the course of the investigation the examining officer will inspect the books and records of the estate, interview the executor and other persons having knowledge of the decedent's affairs, verify the value of the assets and the deductions, and take such other steps as may be necessary in order that the correct amount of tax may be determined.

Upon completion of the investigation the executor will be apprised by the examining officer of his findings, and will be given an opportunity to discuss the case and present such data as he may desire the Commissioner to consider in connection with the examining officer's report. Upon the completion of a review and audit by the Commissioner, the executor will be informed by letter of the result thereof. If the letter contains notification of an amount of unpaid tax, such unpaid amount should be remitted promptly to the collector, and if not paid within the time specified by the applicable provisions of section 406 or section 407, interest will be added as required thereby. (See Art. 83.)

It is the purpose of the Commissioner to make these investigations as soon as practicable after the filing of the return. Where the executor files a *complete* return, and makes written application to the Commissioner for a determination of the tax and discharge from personal liability therefor, the Commissioner will, within one year after receipt of such application, notify the executor of the amount of the tax, and, upon payment thereof, the executor will be discharged from personal liability for any additional estate tax thereafter found to be due. (See Sec. 407.) This provision applies also to cases arising under the Revenue Act of 1918. Attention is here directed to Section 250 (d) of the statute which embodies a provision, "That in the case of *income* received during the lifetime of a decedent, all taxes due thereon shall be determined and assessed by the Commissioner within one year after written request therefor by the executor, administrator, or other fiduciary representing the estate of such decedent: * * *."

THE RETURN—ESTATES OF NONRESIDENTS.

ART. 73. Return of estates of nonresidents.—A return on Form 706 must be filed in duplicate with the Commissioner of Internal Revenue, Washington, D. C., or with such collector of internal revenue as the Commissioner may designate, within one year after the date of death of every nonresident decedent, if any part of the gross estate of such decedent was situated in the United States at the time of his death. It is the duty of the duly qualified executor or administrator to file a return for the whole of that part of the gross estate situated in the United States, whatever its value. If the duly qualified executor or administrator is unable to make a complete return as to any part of the gross estate, he is required to give all the information available to him as to such part, including a description thereof and the name of every person holding a legal or beneficial interest therein. If deductions are claimed, see Articles 55, 56 and 57. If no executor or administrator has been appointed, all persons in actual or constructive possession of any property of the decedent situated in the United States are required to file a return for such portion of the gross estate as had its situs therein. (See Art. 53.)

ART. 74. Supplemental data.—Pursuant to the provisions of Section 404, with respect to furnishing supplemental data, the duly qualified executor or administrator of a nonresident decedent is required to file with the return:

(1) Certified copy of will, or, if the decedent left several wills, to govern in different jurisdictions, certified copy of each will.

(2) Certified copy of inventory of property filed under a foreign estate, succession, or death-duty act; or, if no such inventory was filed, a certified copy of inventory filed with the foreign court of probate jurisdiction.

The specified information is required whether or not the executor wishes to claim the deductions authorized in section 403(b).

PRIVILEGED CHARACTER OF RETURNS.

ART. 75. Returns confidential.—All estate tax returns and notices are treated as privileged communications and may not be exhibited to any person other than the executor or his duly authorized agent, except as stated in Article 76. This requirement of secrecy will be rigidly enforced, and extends to information of a private nature submitted or obtained in connection with a return or notice. The requirement does not operate to prevent internal revenue officers from disclosing the returned value of any item or the amount of any specific deduction, where such disclosure is necessary in order to arrive at a correct determination of the tax. This right of disclosure, however, does not extend to such information as the amount of the estate, the amount of tax, or other general data. Nor are the records in possession of the Bureau, whether on file with the Commissioner or the collector, open to inspection, except as provided in Article 76.

ART. 76. Disclosure to persons having material interest.—Where any person other than the executor has a material interest in ascertaining any fact disclosed by the return, or in obtaining information as to the payment of the tax, he shall make a written application to the Commissioner of Internal Revenue for such information, setting forth the nature of his interest and the purpose of the application. The Commissioner will review the application, and, if it is approved, the collector will be directed to exhibit the return to the applicant, or give him such information as is specified, or the Commissioner may permit an inspection of the return on file in the Bureau, or furnish such information as he deems advisable. Under no circumstances shall the collector give information to persons other than the executor except upon the written order of the Commissioner, and then only to the extent authorized by such order.

ART. 77. Attorneys must have authorization.—In all cases where information is sought regarding an estate, or an interview asked, by an attorney whose name does not appear on Form 706 as the attorney for the estate, or by any agent of the executor or administrator, the information or interview will be denied unless the attorney or agent presents a signed statement from the executor or administrator authorizing him to act in his behalf. Where his name as attorney for the estate appears on Form 706, his identity must be established. If an attorney or other person asks a ruling on a question of law arising in a specific estate, the Commissioner may require satisfactory evidence of the right to obtain such ruling.

For regulations governing the recognition of attorneys, agents, and other persons representing claimants and executors before the Treasury Department, reference should be made to Treasury Department Circular No. 230, dated April 25, 1922, copies of which may be obtained on application to the chief clerk of the Treasury Department.

RETURN BY COLLECTOR.

SEC. 405. That if no administration is granted upon the estate of a decedent, or if no return is filed as provided in section 404, or if a return contains a false or incorrect statement of a material fact, the collector or deputy collector shall make a return and the Commissioner shall assess the tax thereon,

Revised Statutes, Sec. 3176 (Comp. Sts., 1916, Sec. 5899; Sec. 1311, Revenue Act, 1921). If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector, and approved by the Commissioner, shall be prima facie good and sufficient for all legal purposes. * + *

ART. 78. Return by collector or Commissioner.—Where there is no duly qualified executor or administrator, or no return is filed within one year after the decedent's death, or if a filed return contains a false or incorrect statement of a material fact, the collector or deputy collector may make a return from such information as he possesses or is able to obtain. The Commissioner may also make a return in such cases, or amend any return made by a collector or deputy collector, and any return so made or amended, or made by a collector or deputy collector and approved by the Commissioner, shall be prima facie good and sufficient for all legal purposes, and the Commissioner will assess the tax in the same manner as though the return had been filed by the person on whom the duty to make the return rested.

PAYMENT OF TAX AND INTEREST.

SEC. 406. That the tax shall be due and payable one year after the decedent's death; but in any case where the Commissioner finds that payment of the tax within such period would impose undue hardship upon the estate, he may grant an extension or extensions of time for payment not to exceed three years from the due date.

The executor shall pay the tax to the collector or deputy collector, and to such portion of the tax, not paid within one year and six months after the decedent's death, interest at the rate of 6 per centum per annum from the expiration of one year after such death shall be added

as part of the tax irrespective of any extension or extensions of time that may have been granted for the payment of the tax, or any portion thereof.

SEC. 407. That where the amount of tax shown upon a return made in good faith has been fully paid, or time for payment has been extended, as provided in section 406, beyond one year and six months after the decedent's death, and an additional amount of tax is, after the expiration of such period of one year and six months, found to be due, then such additional amount shall be paid upon notice and demand by the collector, and if it remains unpaid for one month after such notice and demand there shall be added as part of the tax interest on such additional amount at the rate of 10 per centum per annum from the expiration of such period until paid, and such additional tax and interest shall, until paid, be and remain a lien upon the entire gross estate.

The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

* * *

ART. 79. **Payment of tax; general.**—While no interest may be added to the tax unless payment thereof has not been made within one year and six months after decedent's death, the tax itself is due and must be paid within one year after the decedent's death unless an extension of time for the payment thereof has been granted by the Commissioner. No discount will be allowed for payment in advance of the due date. The collector will grant to the person paying the tax duplicate receipts, either of which will be sufficient evidence of such payment, and entitle the executor to be credited with the amount by any court having jurisdiction to audit or settle his accounts.

Payment of the amount of tax shown to be due by a return made in good faith will be considered payment of the tax in full, subject, however, to adjustment resulting from an investigation of the estate. If the return is not made in good faith, the payment of the amount of tax shown to be due thereby will not be deemed to be payment in full of the tax, but interest will attach, and penalties will be imposed, as set forth in articles 83 and 89.

Following an investigation of the estate the tax liability will be finally determined by the Commissioner upon the basis of such investigation. If at the time the Commissioner's determination is made the tax has been paid upon the basis of the return, an adjustment will be made of the amount of tax. If the amount of tax already paid exceeds the amount of tax as finally determined, the Commissioner will refund such excess. If the amount of tax as finally determined exceeds the amount of tax already paid, the collector will notify the executor of the amount of the unpaid balance of the tax and demand payment thereof. Payment should be made by the executor immediately upon the receipt of such notification.

Where the investigation of the return shows that no further tax is due, the executor will be notified to that effect. Until the receipt of such notification, he should reserve a sufficient portion of the estate to satisfy any additional tax.

ART. 80. Payment by bonds or uncertified check.—Payment of the estate tax may be made with bonds or notes (including Victory Notes and Treasury Notes) of the United States bearing interest at a higher rate than 4 per centum per annum, provided they were owned by the decedent continuously for at least six months prior to the date of his death, and constituted a part of his estate at death. Such bonds and notes are receivable at par and interest accrued at the time of the payment. When such bonds or notes are to be tendered in payment of estate taxes, a copy of Department Circular No. 225, as heretofore or hereafter amended or supplemented, should be procured and the requirements thereof carefully noted.

Collectors may accept uncertified checks in payment of estate taxes, provided such checks are collectible at par, that is, for the full amount, without any deduction for exchange or other charges. The collector will stamp upon the face of each check before deposit thereof the words "This check is in payment of an obligation to the United States and must be paid at par. No protest," with his name and title. The day on which the collector receives the check will be considered the date of payment so far as the taxpayer is concerned, unless the check is returned dishonored. If the bank on which any such check is drawn should refuse to pay it at par, the check should be returned through the depository bank and be treated in the same manner as a bad check. All expenses incident to the attempt to collect such a check and the return of it through the depository bank must be paid by the drawer of the check to the bank on which it is drawn, since no deduction can be made from amounts received in payments of taxes. See Section 3210 of the Revised Statutes. If any taxpayer whose check has been returned uncollected by the depository bank should fail at once to make the check good, the collector should proceed to collect the tax as though no check had been given. A taxpayer who tenders a certified check in payment of taxes is also not released from his obligation until the check has been paid. See chapter 191 of the Act of March 2, 1911.

Treasury Department Circular No. 176, as amended, prescribes detailed regulations governing the deposit and collection of checks. Collectors are referred to paragraphs 13-16 and paragraph 26 thereof as to the deposit of taxpayers' checks and the handling of uncollected or lost items.

ART. 81. The executor shall pay the tax.—The statute provides that the executor or administrator shall pay the tax. This duty applies to the entire tax, regardless of the fact that the gross estate con-

sists in part of property which will not come into his possession. Where there is no duly qualified executor or administrator, all persons in actual or constructive possession of any property of the decedent are liable for and required to pay the tax to the extent of the value of such property. See, also, Article 86. As to the personal liability of the executor, see Article 99.

ART. 82. Extension of time for payment.—In any case where the Commissioner finds that payment of the tax within one year after the decedent's death would impose undue hardship upon the estate, an extension or extensions of time will be granted by him for the payment of the tax for a period not to exceed in all three years from the due date. Extensions of time for tax payment will be granted only in exceptional cases, where it is evident that the payment of the tax within the statutory period would cause the estate serious financial loss. No single extension for more than one year will be granted. Application for extension of time for payment should be filed with the collector, and should contain a full statement of the facts upon which the application is based. The collector will refer the application to the Commissioner, with suitable recommendations.

An extension of time to pay the tax does not relieve from the duty of filing the return within one year from the date of death, nor will it operate to prevent interest from accruing as provided in the statute.

ART. 83. Interest on tax.—Sections 406 and 407 contain the only provisions relating to interest on estate tax and consequently all questions of this character must be determined in accordance therewith. Section 407 deals with interest upon *additional* tax, and applies only to cases where the amount of tax shown upon a return made in good faith is fully paid within one year and six months after decedent's death, or time for payment of any portion thereof is extended beyond such period, and where after the lapse of such year and six months, the Commissioner determines that the correct amount of tax is in excess of that indicated by such return. The additional tax so determined, if not paid within one month after notice and demand by the collector, bears interest at the rate of 10 per centum per annum from the expiration of such time until payment is received by the collector.

All other cases fall within, and are governed by, the provisions of Section 406. Thus, where any portion of the tax shown upon a return made in good faith is not paid within one year and six months following decedent's death, interest accrues thereon, though an extension of time for payment may have been granted, at the rate of 6 per centum per annum from the due date (one year after decedent's death) until payment is received by the collector. Likewise, in the

case of a return so made and where no extension of time for payment is granted, so much of the entire tax (that is, the amount of tax as finally determined by the Commissioner, whether determined by him before or after the expiration of such period of one year and six months following the decedent's death, and whether the amount so determined be greater or less than that shown upon the return) as is not paid within such period bears interest at the rate of 6 per centum per annum from the due date until payment is received by the collector.

Where the return is not made in good faith, Section 407 has no application, even though an extension of time may have been procured, and hence in all such cases any portion of the entire tax not paid within such period of one year and six months following decedent's death bears interest at the rate of 6 per centum per annum from the due date of the tax (one year after decedent's death) until payment thereof is received by the collector.

COLLECTION OF TAX.

SEC. 408. That if the tax herein imposed is not paid on or before the due date thereof the collector shall, upon instruction from the Commissioner, proceed to collect the tax under the provisions of general law, or commence appropriate proceedings in any court of the United States, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. * * *

ART. 84. **Remedy not exclusive.**—The remedy by action, here provided, is not exclusive. For other available remedies for the collection of the tax, see Article 102.

REIMBURSEMENT.

SEC. 408. * * * If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution. If any part of the gross estate consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total

tax paid as the proceeds, in excess of \$40,000, of such policies bear to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio.

ART. 85. Right to reimbursement not enforceable by Commissioner.—Where any portion of the tax is paid by, or collected out of that part of the estate passing to, or in the possession of, any person other than the duly qualified executor or administrator, such person may be entitled to reimbursement, either out of the undistributed estate or by contribution from other beneficiaries whose shares or interests in the estate would have been reduced had the tax been paid before distribution of the estate, or whose shares or interests are subject either to an equal or prior liability for the payment of taxes, debts, or other charges against the estate. The executor is also entitled to require beneficiaries under insurance policies to bear their proportion of the tax. These provisions, however, are not designed to curtail the right of the Commissioner to collect the tax from any person, or out of any property, liable therefor. The Commissioner can not be required to apportion the tax among the persons liable, nor to enforce any right to reimbursement or contribution. For example, where a transfer has been made in contemplation of death, the Commissioner may hold both the executor and the transferee liable for the tax with respect to the property transferred. In such case, if the tax is paid by the executor, he may not look to the Commissioner for relief by refund of part of the tax.

LIEN.

SEC. 409. That unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

If (a) the decedent makes a transfer of, or creates a trust with respect to, any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for a fair consideration in money or money's worth) or (b) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for a fair consideration in money or money's worth shall

be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for a fair consideration in money or money's worth.

SEC. 407. * * * If the executor files a complete return and makes written application to the commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Commissioner, as soon as possible and in any event within one year after receipt of such application, shall notify the executor of the amount of the tax, and upon payment thereof the executor shall be discharged from personal liability for additional tax thereafter found to be due, and shall be entitled to receive a receipt or writing showing such discharge: *Provided, however,* That such discharge shall not operate to release the gross estate from the lien of any additional tax that may thereafter be found to be due while the title to such gross estate remains in the heirs, devisees, or distributees thereof; but no part of such gross estate shall be subject to such lien or to any claim or demand for any such tax if the title thereto has passed to a bona fide purchaser for value.

ART. 86. **Property subject to lien.**—This lien attaches to every part of the gross estate, whether or not the property comes into the possession of the duly qualified executor or administrator. It attaches to the extent of the tax shown to be due by the return and of any additional tax found to be due upon investigation.

Where the decedent transferred or placed in trust property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for a fair consideration in money or money's worth), and where proceeds of insurance on his life passed to a specific beneficiary other than the duly qualified executor or administrator, a lien attaches thereto to the amount of the tax in respect to the particular property or money received by such transferee, trustee, or insurance beneficiary, and such transferee, trustee, or insurance beneficiary is personally liable for such tax.

Where the transferee or trustee sells the property to a bona fide purchaser for a fair consideration in money or money's worth the lien upon the property is divested; but there is substituted a like lien upon all the property of such transferee or in case of such transfer by a trustee upon all the assets of the trust estate, except such part as may be sold to a bona fide purchaser for such a consideration.

The lien upon the entire property constituting the gross estate continues for a period of 10 years after the decedent's death, except—

(1) Where the tax is paid in full before the expiration of such period;

(2) Such portion of the gross estate as is used for the payment of charges against the estate and expenses of its administration allowed by any court having jurisdiction thereof;

(3) Such portion of the gross estate as has passed to a bona fide purchaser for value after payment of the full amount of tax determined by the Commissioner pursuant to a request of the executor, as authorized by Section 407, for discharge from personal liability (see Art. 72);

(4) Such property as has been sold by any transferee or trustee to a bona fide purchaser for a fair consideration in money or money's worth, where such property was received from the decedent as a transfer in contemplation of, or intended to take effect in possession or enjoyment at or after, his death (except in the case of a bona fide sale for a fair consideration in money or money's worth);

(5) Where the Commissioner issues his certificate releasing such lien (see Art. 87).

ART. 87. Release of lien.—The statute provides that, if the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may issue his certificate releasing any or all property of the estate from the lien. The issuance of certificates is a matter resting within the discretion of the Commissioner, and certificates will be issued only in case there is actual need therefor. In most cases the receipts issued by the collector constitute sufficient acquittance.

The tax will be considered fully discharged for the purpose of the issuance of a certificate only when investigation has been completed, and payment of the tax, as determined by the Commissioner, has been made. A certificate of release of lien may be issued by the Commissioner under these circumstances as to any or all property of the estate, upon the filing by the executor of an application in duplicate on Form 791. The form must contain all the information called for.

Where the tax liability has not been fully discharged, as provided above, no general certificate of release will be granted, but releases of lien upon particular items of property will be issued upon the filing with the Commissioner of such security, if any, as he may require. Where security is required, a corporate indemnity bond must be furnished, or Liberty Bonds, or other bonds or notes of the United States, must be deposited with the collector. In lieu of such security, the Commissioner may in any case issue the release upon payment of the estimated tax upon the transfer of the property released, computed at the highest rate applicable to the estate. If, upon consideration of the application, the Commissioner finds the issuance of the certificate to be warranted, the collector will notify the executor of the amount of the bond, as fixed by the Commissioner.

PENALTIES.

SEC. 410. That whoever knowingly makes any false statement in any notice or return required to be filed under this title shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both.

Whoever fails to comply with any duty imposed upon him by section 404, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Commissioner or any collector or law officer of the United States, or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this title, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

Revised Statutes, Sec. 3176 (Comp. Sts., 1916, Sec. 5899; Sec. 1311, Revenue Act, 1921). * * * In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner of Internal Revenue shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax 50 per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

ART. 88. Nature of penalties.—Two kinds of penalties are provided for delinquency with respect to the duties imposed by the estate tax law:

- (1) A specific penalty, to be recovered by suit, unless paid on demand, or adjusted by an acceptance of an offer in compromise; and
- (2) A penalty of a certain percentage of the tax, to be added to the tax and collected in the same manner as the tax.

In any case where more than one penalty is provided, the Government may impose any one or more thereof.

ART. 89. Penalties for false or fraudulent notice or return.—Where statements in the notice required by Section 404, or in the return, are knowingly and willfully false, the person making them is subject to a penalty not exceeding \$5,000, or imprisonment for not exceeding one year, or both; and, for a false or fraudulent return, 50 per centum may be added to the amount of the tax.

ART. 90. Penalty for failure to file notice or return.—For failure to file the notice or the return within the time prescribed, the person in default is subject to a penalty not to exceed \$500; and, for the failure to file the return within the time prescribed, 25 per centum may be added to the amount of the tax, unless the failure so to file the return was due to a reasonable cause and not to willful neglect.

ART. 91. Penalty for failure to exhibit records or property.—Where a person in possession or control of any record, file, or paper, supposed to contain information relating to the estate, or having in his possession or control property comprised in the gross estate of the decedent, fails to exhibit the same, upon the request of the Commissioner or any collector or law officer of the United States, or his duly authorized deputy or agent, in the performance of his duties, he is liable to a penalty not to exceed \$500, to be recovered by civil action. He must comply with such a request whether or not he believes that the documents contain information relating to the estate.

CLAIMS FOR ABATEMENT AND REFUND.

Revised Statutes, Sec. 3220 (Comp. Sts., 1916, Sec. 5944; Sec. 1315, Revenue Act, 1921). The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section.

Revised Statutes, Sec. 3225 (Comp. Sts., 1916, Sec. 5948; Sec. 1323, Revenue Act, 1921). When a second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded, or paid back, or recovered by any suit, unless it is proved that such list, statement, or return was not willfully false or fraudulent and did not contain any willful understatement or undervaluation.

SEC. 1316. That section 3228 of the Revised Statutes is amended to read as follows:

“**SEC. 3228.** All claims for the refunding or crediting of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, must be presented to the Commissioner of Internal Revenue within four years next after payment of such tax, penalty, or sum.”

This section, except as modified by section 252, shall apply retroactively to claims for refund under the Revenue Act of 1916, the Revenue Act of 1917, and the Revenue Act of 1918. (Revenue Act of 1921.)

ART. 92. Kinds of relief.—Two forms of relief are afforded the executor in cases where he believes that an excessive amount of tax or an illegal penalty has been assessed or paid either upon the basis of the return or of the investigation conducted by the Bureau. The two forms of relief are:

(1) Claim for abatement, where the alleged excessive tax or illegal penalty has been assessed but not paid.

(2) Claim for refund, where such tax or penalty has been paid.

ART. 93. Claim for abatement.—Claims for the abatement of taxes or penalties illegally assessed must be made upon Form 843, and must be sustained by the affidavit of the executor or other parties cognizant of the facts. When a tax or penalty has been assessed, the presumption is that the assessment is correct; and the burden of showing that it was improperly or illegally assessed rests upon the applicant for abatement. The affidavit must therefore contain a full and explicit statement of all the material facts relating to the claim in support of which it is offered in order that the claim may receive proper consideration. Nothing should be left to inference, but all the facts relied upon should appear in the papers themselves. The filing of a claim for the abatement of a tax or penalty alleged to have been erroneously or illegally assessed does not necessarily operate as a suspension of the collection thereof. The collector may proceed to collect if he thinks it necessary, and leave the taxpayer to his remedy by a claim for refund.

ART. 94. Accrual of interest as affected by abatement claim.—Where a claim for abatement is rejected, the making of the application does not affect the running of interest. The allowance of the claim, however, in whole or part, discharges all liability for interest upon the portion of the claim allowed. The same rules apply where, upon the request of the executor, a reinvestigation is made.

ART. 95. Limitation of time to file claim for abatement of additional tax.—If it is desired to file claim for abatement of the additional amount of tax disclosed upon an investigation, such claim must be filed with the collector within one month after receipt by the executor of the Commissioner's letter of notification. After that period the claim will not be considered, but the tax must be paid, and adjustment sought by claim for refund.

ART. 96. Claim for refund.—Claims for the refunding of estate taxes imposed by any of the several Revenue Acts, and of penalties in respect thereto, which are alleged to have been collected without legal authority, must be presented to the Commissioner within four years next after payment thereof. Such claims must be made on Form 843. As in the case of claims for abatement, the burden of proof rests upon the claimant. All the facts relied upon in support of the claim should be clearly set forth under oath. With the claim should be presented, in addition to the evidence:

(1) Where the claim is made by an executor or administrator, a certificate of the court showing that the appointment remains in full force and effect.

(2) Where the executor or administrator has been discharged and no administrator de bonis non has been appointed and qualified, there should be submitted, in lieu of the certificate above mentioned, (a) a certified copy of the court order granting the discharge, and, (b) a certified copy of the order of distribution, or, if such order does not fully disclose the identity of the person or persons entitled to receive any amount that may be refunded and the percentage or proportion thereof to which each, if more than one, is entitled, there should be submitted a certified copy of the decedent's will, if any, and such further proof as may be requisite to establish both the identity of such person or persons and the percentage or proportion of the amount sought to be refunded to which each, where there are more than one, is entitled.

(3) Where a claim is filed after the administration of the estate has been closed, and is signed by one only, or by less than all, of a number of beneficiaries entitled to share in the refund, or is signed by a person acting as attorney or agent for the interested parties, there must accompany the claim, in addition to the proof required in paragraph (2) above, a power of attorney, duly executed by all beneficiaries entitled to any portion of the repayment, authorizing the claimant or claimants to present the matter before the Bureau.

ART. 97. Payment of claims and interest.—Warrants in payment of claims allowed will be drawn to the order of the person or persons entitled to the proceeds, and will be forwarded directly to such person or persons by the Treasurer of the United States, except where delivery to an attorney or agent has been authorized in accordance with the regulations contained in Treasury Department Circular No. 230, dated April 25, 1922, as heretofore or hereafter amended or supplemented. If the claimants are indebted to the United States for taxes, such taxes must be paid before the warrants are delivered. (Act of Mar. 3, 1875 (18 Stats. 481).)

On the allowance of a claim for refund of taxes paid Section 1324 of the statute provides for the payment of interest upon the total amount of such refund at the rate of one-half of 1 per centum per month to the date of such allowance, as follows: (1) If such amount was paid under a specific protest setting forth in detail the basis of and reasons for such protest, from the time when such tax was paid, or (2) if such amount was not paid under protest but pursuant to an additional assessment, from the time such additional assessment was paid, or (3) if no protest was made and the tax was not paid pursuant to an additional assessment, from six months after the date of filing of such claim for refund.

POWER TO COMPROMISE OR REMIT PENALTIES.

Revised Statutes, Sec. 3229 (Comp. Sts., 1916, Sec. 5952). The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal-revenue laws instead of commencing suit thereon; and, with the advice and consent of the said Secretary and the recommendation of the Attorney-General, he may compromise any such case after a suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of the Commissioner the opinion of the Solicitor of Internal Revenue, or of the officer acting as such, with his reasons therefor, with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise.

Revised Statutes, Sec. 5292 (Comp. Sts., 1916, Sec. 10,130). Whenever any person who shall have incurred any fine, penalty, or forfeiture, or disability * * * shall prefer his petition to the judge of the district in which such fine, penalty, or forfeiture, or disability has accrued, truly and particularly setting forth the circumstances of his case, and shall pray that the same may be mitigated or remitted, the judge shall inquire, in a summary manner, into the circumstances of the case; first causing reasonable notice to be given to the person claiming such fine, penalty, or forfeiture, and to the attorney of the United States for such district, that each may have an opportunity of showing cause against the mitigation or remission thereof; and shall cause the facts appearing upon such inquiry to be stated and annexed to the petition, and direct their transmission to the Secretary of the Treasury. The Secretary shall thereupon have power to mitigate or remit such fine, forfeiture, or penalty, or remove such disability, or any part thereof, if, in his opinion, the same was incurred without willful negligence, or any intention of fraud in the person incurring the same; and to direct the prosecution if any has been instituted for the recovery thereof, to cease and be discontinued, upon such terms or conditions as he may deem reasonable and just.

Revised Statutes, Sec. 5293 (Comp. Sts., 1916, Sec. 10,131). The Secretary of the Treasury is authorized to prescribe such rules and modes of proceeding to ascertain the facts upon which an application for remission of a fine, penalty, or forfeiture, is founded, as he deems proper, and, upon ascertaining them, to remit the fine, penalty, or forfeiture, if in his opinion it was incurred without willful negligence or fraud, in either of the following cases:

First. If the fine, penalty, or forfeiture was imposed under authority of any revenue law, and the amount does not exceed \$1,000. * * *

ART. 98. Power to compromise or remit.—The Commissioner, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal-revenue laws instead of commencing suit thereon, and with the advice and consent of the Secretary, and upon the recommendation of the Attorney-General, may compromise any such case after suit thereon has been commenced by the United States. Accordingly, the power to

compromise extends to (a) both civil and criminal cases; (b) cases whether before or after suit; and (c) both taxes and penalties, except that taxes legally due from a solvent taxpayer may not be compromised. Refunds can not be made of accepted offers in compromise in cases where it is subsequently ascertained that no violation of law was involved. Where a fine, penalty, or forfeiture, not exceeding \$1,000, is incurred without willful negligence or fraud, it may be remitted by the Secretary of the Treasury; and he may mitigate or remit other fines, penalties, forfeitures, and disabilities where the court has inquired into the matter and made findings.

PERSONAL LIABILITY OF EXECUTOR.

Revised Statutes, Sec. 3467 (Comp. Sts., 1916, Sec. 6373). Every executor, administrator, or assignee, or other person, who pays any debts due by the person or estate from [for] whom or for which he acts, before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

ART. 99. Extent of liability.—The executor is personally liable for the payment of the estate tax to the amount of the full value of the assets of the estate which have at any time come into his hands. Where no executor or administrator has been appointed, every person in actual or constructive possession of any property of the decedent is liable for the tax as an executor to the value of such property, except as limited by Article 86 in the case of transferees, trustees and insurance beneficiaries.

EXAMINATION OF RECORDS AND TAKING OF TESTIMONY.

SEC. 1308. That the Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matter required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

SEC. 1310(a). That if any person is summoned under this Act to appear, to testify, or to produce books, papers or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(b) The district courts of the United States at the instance of the United States are hereby invested with such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of

injunction, and on ne exeat republica, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the provisions of this Act. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such provisions.

ART. 100. Securing evidence—Taking testimony.—In order to ascertain the correctness of a return, or to make a return where none has been made, the Commissioner has power to require the attendance, and to take the testimony, of the person rendering the return, or any officer or employee of such person, or any other person having knowledge in the premises. Such persons may be required to produce any relevant book, paper, or other record. This power may be exercised by any revenue agent or inspector designated for the purpose.

ART. 101. Power to compel compliance.—Where any person is summoned to appear and testify, or to produce books, papers, or other data, the District Court of the United States for the district in which such person resides has power to compel the giving of the testimony, or the production of the books, papers, or data, and to issue any appropriate process, writ, or order.

REMEDIES FOR COLLECTION.

SEC. 1300. That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

SEC. 1307. That whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return or such statements as he deems sufficient to show whether or not such person is liable to tax.

ART. 102. Remedies for collection of tax.—The provisions of the statute quoted above apply to the estate tax law; and three remedies are thus provided for the collection of the tax:

(1) *Collection by distraint.*—The collector may issue warrant of distraint authorizing the seizure and sale of any or all of the assets of the estate. (See R. S., Secs. 3187 et seq.; Comp. Sts., 1916, Sec. 5909 et seq.)

(2) *Collection by suit to subject the property to sale.*—The collector may commence in any court of the United States appropriate proceedings, in the name of the United States, to subject the property of the decedent to sale under the judgment or decree of the court.

(3) *Collection by suit for personal liability.*—The personal liability of the executor, of the transferee or trustee of property transferred in contemplation of or intended to take effect in possession or enjoyment at or after decedent's death, and of the beneficiary of life insurance, may be enforced by any appropriate action.

ART. 103. *Executor's duty to keep records.*—It is the duty of the executor to keep such records as the Commissioner may require. Executors are required to keep such complete and detailed records of the affairs of the estate as will enable the Commissioner to determine accurately the amount of the tax liability.

ART. 104. *Executor's duty to render statements.*—It is the duty of the executor not only to make the formal return, but also to render any other sworn statement which the Commissioner may require for the purpose of determining whether a tax liability exists.

ESTATES ADMINISTERED IN THE UNITED STATES COURT FOR CHINA.

SEC. 411. (a) That the term "resident" as used in this title includes a citizen of the United States with respect to whose property any probate or administration proceedings are had in the United States Court for China. Where no part of the gross estate of such decedent is situated in the United States at the time of his death, the total amount of tax due under this title shall be paid to or collected by the clerk of such court, but where any part of the gross estate of such decedent is situated in the United States at the time of his death, the tax due under this title shall be paid to or collected by the collector of the district in which is situated the part of the gross estate in the United States, or, if such part is situated in more than one district, then the collector of such district as may be designated by the Commissioner.

(b) For the purpose of this section the clerk of the United States Court for China shall be a collector for the territorial jurisdiction of such court, and taxes shall be collected by and paid to him in the same manner and subject to the same provisions of law, including penalties, as the taxes collected by and paid to a collector in the United States.

(c) The proviso in the Act entitled "An Act making appropriation for the Diplomatic and Consular Service for the fiscal year ending June 30, 1921," approved June 4, 1920, which reads as follows: "*Provided*, That in probate and administration proceedings there shall be collected by said clerk, before entering the order of final distribution, to be paid into the Treasury of the United States, the same inheritance taxes from time to time collected under the laws enacted by the Congress of the United States from the estates of decedents residing within the territorial jurisdiction of the United States," is hereby repealed.

SCOPE OF REPEAL.

SEC. 1400. (a) That the following parts of the Revenue Act of 1918 are repealed, to take effect (except as otherwise provided in this Act)

on January 1, 1922, subject to the limitations provided in subdivision (b):

* * * * * *

Title IV (called "Estate Tax") on the passage of this Act;

* * * * * *

Sections 1314, 1315, 1316, 1317, 1319, and 1320 of Title XIII (being certain administrative provisions) on the passage of this Act.

(b) The parts of the Revenue Act of 1918 which are repealed by this Act shall (unless otherwise specifically provided in this Act) remain in force for the assessment and collection of all taxes which have accrued under the Revenue Act of 1918 at the time such parts cease to be in effect, and for the imposition and collection of all penalties or forfeitures which have accrued or may accrue in relation to any such taxes. In the case of any tax imposed by any part of the Revenue Act of 1918 repealed by this Act, if there is a tax imposed by this Act in lieu thereof, the provision imposing such tax shall remain in force until the corresponding tax under this Act takes effect under the provisions of this Act. The unexpended balance of any appropriation heretofore made and now available for the administration of any such part of the Revenue Act of 1918 shall be available for the administration of this Act or the corresponding provision thereof.

ART. 105. Scope of repeal.—The Revenue Act of 1921 retains in force the provisions of Title IV of the Revenue Act of 1918 for the assessment and collection of all taxes accruing thereunder, and for the imposition and collection of all penalties which have accrued or may accrue in relation to any such taxes.

ART. 106. Promulgation of regulations.—In pursuance of the statute, the foregoing regulations are hereby made and promulgated, and all rulings inconsistent herewith are hereby revoked. These regulations apply to all pending estate tax cases except where a particular question is governed by a specific provision of the earlier statutes differing from the Revenue Act of 1921, in which cases the provisions of the applicable statute control and Regulations 37 (revised January, 1921) remain in full force and effect, subject to the following changes:

Article 47 is amended to read as follows:

The unpaid principal of mortgages on property of the decedent, whether the property be situated within or without the United States, including interest accrued to the date of death, is deductible.

Articles 29, 71, and 76-A are revoked

D. H. BLAIR,
Commissioner of Internal Revenue.

Approved July 27, 1922.

A. W. MELLON,
Secretary of the Treasury.

APPENDIX.

REVENUE ACT OF 1921.

TITLE IV.—ESTATE TAX.

SEC. 400. That when used in this title—

The term “executor” means the executor or administrator of the decedent, or, if there is no executor or administrator, any person in actual or constructive possession of any property of the decedent;

The term “net estate” means the net estate as determined under the provisions of section 403;

The term “month” means calendar month; and

The term “collector” means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner.

SEC. 401. That, in lieu of the tax imposed by Title IV of the Revenue Act of 1918, a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 403) is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, whether a resident or non-resident of the United States:

1 per centum of the amount of the net estate not in excess of \$50,000;

2 per centum of the amount by which the net estate exceeds \$50,000 and does not exceed \$150,000;

3 per centum of the amount by which the net estate exceeds \$150,000 and does not exceed \$250,000;

4 per centum of the amount by which the net estate exceeds \$250,000 and does not exceed \$450,000;

6 per centum of the amount by which the net estate exceeds \$450,000 and does not exceed \$750,000;

8 per centum of the amount by which the net estate exceeds \$750,000 and does not exceed \$1,000,000;

10 per centum of the amount by which the net estate exceeds \$1,000,000 and does not exceed \$1,500,000;

12 per centum of the amount by which the net estate exceeds \$1,500,000 and does not exceed \$2,000,000;

14 per centum of the amount by which the net estate exceeds \$2,000,000 and does not exceed \$3,000,000;

16 per centum of the amount by which the net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

18 per centum of the amount by which the net estate exceeds \$4,000,000 and does not exceed \$5,000,000;

20 per centum of the amount by which the net estate exceeds \$5,000,000 and does not exceed \$8,000,000;

22 per centum of the amount by which the net estate exceeds \$8,000,000 and does not exceed \$10,000,000; and

25 per centum of the amount by which the net estate exceeds \$10,000,000.

The taxes imposed by this title or by Title II of the Revenue Act of 1916 (as amended by the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes," approved March 3, 1917) or by Title IX of the Revenue Act of 1917, or by Title IV of the Revenue Act of 1918, shall not apply to the transfer of the net estate of any decedent who has died or may die from injuries received or disease contracted in line of duty while serving in the military or naval forces of the United States in the war against the German Government, or to the transfer of the net estate of any citizen of the United States who has died or may die from injuries received or disease contracted in line of duty while serving in the military or naval forces of any country while associated with the United States in the prosecution of such war, or prior to the entrance therein of the United States, and any tax collected upon such transfer shall be refunded to the estate of such decedent.

SEC. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate;

(b) To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower, curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy;

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has at any time created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death (whether

such transfer or trust is made or created before or after the passage of this Act), except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;

(d) To the extent of the interest therein held jointly or as tenants in the entirety by the decedent and any other person, or deposited in banks or other institutions in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than a fair consideration in money or money's worth: *Provided*, That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than a fair consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further*, That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy in the entirety by the decedent and spouse, or where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of one-half of the value thereof;

(e) To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for a fair consideration in money or money's worth; and

(f) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over \$40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life.

SEC. 403. That for the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages upon, or any indebtedness in respect to, property (except, in the case of a resident decedent, where such property is not situated in the United States), losses incurred during the settlement of the estate arising from fires,

storms, shipwreck, or other casualty, or from theft, when such losses are not compensated for by insurance or otherwise, and such amounts reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or any estate, succession, legacy, or inheritance taxes;

(2) An amount equal to the value of any property forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent where such property can be identified as having been received by the decedent from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received: *Provided*, That this deduction shall be allowed only where an estate tax under this or any prior Act of Congress was paid by or on behalf of the estate of such prior decedent, and only in the amount of the value placed by the Commissioner on such property in determining the value of the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate and not deducted under paragraphs (1) or (3) of subdivision (a) of this section. This deduction shall be made in case of the estates of all decedents who have died since September 8, 1916;

(3) The amount of all bequests, legacies, devises, or transfers, except bona fide sales for a fair consideration in money or money's worth, in contemplation of or intended to take effect in possession or enjoyment at or after the decedent's death, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees exclusively for such religious, charitable, scientific, literary, or educational purposes. This deduction shall be made in case of the estates of all decedents who have died since December 31, 1917; and

(4) An exemption of \$50,000;

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—

(1) That proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears

to the value of his entire gross estate, wherever situated, but in no case shall the amount so deducted exceed 10 per centum of the value of that part of his gross estate which at the time of his death is situated in the United States;

(2) An amount equal to the value of any property forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent where such property can be identified as having been received by the decedent from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received: *Provided*, That this deduction shall be allowed only where an estate tax under this or any prior Act of Congress was paid by or on behalf of the estate of such prior decedent, and only in the amount of the value placed by the Commissioner on such property in determining the value of the gross estate of such prior decedent, and only to the extent that the value of such property is included in that part of the decedent's gross estate which at the time of his death is situated in the United States and not deducted under paragraphs (1) or (3) of subdivision (b) of this section. This deduction shall be made in case of the estates of all decedents who have died since September 8, 1916; and

(3) The amount of all bequests, legacies, devises, or transfers, except bona fide sales for a fair consideration, in money, or money's worth, in contemplation of or intended to take effect in possession or enjoyment at or after the decedent's death, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees exclusively for such religious, charitable, scientific, literary, or educational purposes within the United States. This deduction shall be made in case of the estates of all decedents who have died since December 31, 1917.

No deduction shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section 404 the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States.

For the purpose of this title stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States, and any property of which the decedent has made a transfer or with respect to which he has created a trust, within the meaning of subdivision (c) of section 402, shall be deemed to be

situated in the United States, if so situated either at the time of the transfer or the creation of the trust, or at the time of the decedent's death.

The amount receivable as insurance upon the life of a nonresident decedent, and any moneys deposited with any person carrying on the banking business, by or for a nonresident decedent who was not engaged in business in the United States at the time of his death, shall not, for the purpose of this title, be deemed property within the United States.

Missionaries duly commissioned and serving under boards of foreign missions of the various religious denominations in the United States, dying while in the foreign missionary service of such boards, shall not, by reason merely of their intention to permanently remain in such foreign service, be deemed nonresidents of the United States, but shall be presumed to be residents of the State, the District of Columbia, or the Territories of Alaska or Hawaii wherein they respectively resided at the time of their commission and their departure for such foreign service.

In the case of any estate in respect to which the tax has been paid, if necessary to allow the benefit of the deduction under paragraphs (2) and (3) of subdivision (a) or (b) the tax shall be redetermined and any excess of tax paid shall be refunded to the executor.

SEC. 404. That the executor, within two months after the decedent's death, or within a like period after qualifying as such, shall give written notice thereof to the collector. The executor shall also, at such times and in such manner as may be required by regulations made pursuant to law, file with the collector a return under oath in duplicate, setting forth (a) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident, of that part of his gross estate situated in the United States; (b) the deductions allowed under section 403; (c) the value of the net estate of the decedent as defined in section 403; and (d) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

Return shall be made in all cases where the gross estate at the death of the decedent exceeds \$50,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate. The Commissioner shall make all

assessments of the tax under the authority of existing administrative special and general provisions of law relating to the assessment and collection of taxes.

SEC. 405. That if no administration is granted upon the estate of a decedent, or if no return is filed as provided in section 404, or if a return contains a false or incorrect statement of a material fact, the collector or deputy collector shall make a return and the Commissioner shall assess the tax thereon.

SEC. 406. That the tax shall be due and payable one year after the decedent's death; but in any case where the Commissioner finds that payment of the tax within such period would impose undue hardship upon the estate, he may grant an extension or extensions of time for payment not to exceed three years from the due date.

The executor shall pay the tax to the collector or deputy collector, and to such portion of the tax, not paid within one year and six months after the decedent's death, interest at the rate of 6 per centum per annum from the expiration of one year after such death shall be added as part of the tax irrespective of any extension or extensions of time that may have been granted for the payment of the tax, or any portion thereof.

SEC. 407. That where the amount of tax shown upon a return made in good faith has been fully paid, or time for payment has been extended, as provided in section 406, beyond one year and six months after the decedent's death, and an additional amount of tax is, after the expiration of such period of one year and six months, found to be due, then such additional amount shall be paid upon notice and demand by the collector, and if it remains unpaid for one month after such notice and demand there shall be added as part of the tax interest on such additional amount at the rate of 10 per centum per annum from the expiration of such period until paid, and such additional tax and interest shall, until paid, be and remain a lien upon the entire gross estate.

The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

If the executor files a complete return and makes written application to the Commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Commissioner, as soon as possible and in any event within one year after receipt of such application, shall notify the executor of the amount of the tax, and upon payment thereof the executor shall be discharged from personal liability for any additional tax thereafter found to be due,

and shall be entitled to receive a receipt or writing showing such discharge: *Provided, however,* That such discharge shall not operate to release the gross estate from the lien of any additional tax that may thereafter be found to be due while the title to such gross estate remains in the heirs, devisees, or distributees thereof; but no part of such gross estate shall be subject to such lien or to any claim or demand for any such tax if the title thereto has passed to a bona fide purchaser for value.

SEC. 408. That if the tax herein imposed is not paid on or before the due date thereof the collector shall, upon instruction from the Commissioner, proceed to collect the tax under the provisions of general law, or commence appropriate proceedings in any court of the United States, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto.

If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution. If any part of the gross estate consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds, in excess of \$40,000, of such policies bear to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio.

SEC. 409. That unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations

prescribed by him, with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

If (a) the decedent makes a transfer of, or creates a trust with respect to, any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for a fair consideration in money or money's worth) or (b) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for a fair consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for a fair consideration in money or money's worth.

SEC. 410. That whoever knowingly makes any false statement in any notice or return required to be filed under this title shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both.

Whoever fails to comply with any duty imposed upon him by section 404, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Commissioner or any collector or law officer of the United States, or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this title, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

SEC. 411. (a) That the term "resident" as used in this title includes a citizen of the United States with respect to whose property any probate or administration proceedings are had in the United States Court for China. Where no part of the gross estate of such decedent is situated in the United States at the time of his death, the total amount of tax due under this title shall be paid to or collected by the clerk of such court, but where any part of the gross estate of such decedent is situated in the United States at the time of his death, the tax due under this title shall be paid to or collected

by the collector of the district in which is situated the part of the gross estate in the United States, or, if such part is situated in more than one district, then the collector of such district as may be designated by the Commissioner.

(b) For the purpose of this section the clerk of the United States Court for China shall be a collector for the territorial jurisdiction of such court, and taxes shall be collected by and paid to him in the same manner and subject to the same provisions of law, including penalties, as the taxes collected by and paid to a collector in the United States.

(c) The proviso in the Act entitled "An Act making appropriation for the Diplomatic and Consular Service for the fiscal year ending June 30, 1921," approved June 4, 1920, which reads as follows: "*Provided*, That in probate and administration proceedings there shall be collected by said clerk, before entering the order of final distribution, to be paid into the Treasury of the United States, the same inheritance taxes from time to time collected under the laws enacted by the Congress of the United States from the estates of decedents residing within the territorial jurisdiction of the United States," is hereby repealed.

REVENUE ACT OF 1918.

TITLE IV.—ESTATE TAX.

SEC. 400. That when used in this title—

The term "executor" means the executor or administrator of the decedent, or, if there is no executor or administrator, any person who takes possession of any property of the decedent; and

The term "collector" means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner.

SEC. 401. That (in lieu of the tax imposed by Title II of the Revenue Act of 1916, as amended, and in lieu of the tax imposed by Title IX of the Revenue Act of 1917) a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 403) is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, whether a resident or nonresident of the United States:

1 per centum of the amount of the net estate not in excess of \$50,000;

2 per centum of the amount by which the net estate exceeds \$50,000 and does not exceed \$150,000;

3 per centum of the amount by which the net estate exceeds \$150,000 and does not exceed \$250,000;

4 per centum of the amount by which the net estate exceeds \$250,000 and does not exceed \$450,000;

6 per centum of the amount by which the net estate exceeds \$450,000 and does not exceed \$750,000;

8 per centum of the amount by which the net estate exceeds \$750,000 and does not exceed \$1,000,000;

10 per centum of the amount by which the net estate exceeds \$1,000,000 and does not exceed \$1,500,000;

12 per centum of the amount by which the net estate exceeds \$1,500,000 and does not exceed \$2,000,000;

14 per centum of the amount by which the net estate exceeds \$2,000,000 and does not exceed \$3,000,000;

16 per centum of the amount by which the net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

18 per centum of the amount by which the net estate exceeds \$4,000,000 and does not exceed \$5,000,000;

20 per centum of the amount by which the net estate exceeds \$5,000,000 and does not exceed \$8,000,000;

22 per centum of the amount by which the net estate exceeds \$8,000,000 and does not exceed \$10,000,000; and

25 per centum of the amount by which the net estate exceeds \$10,000,000.

The taxes imposed by this title or by Title II of the Revenue Act of 1916 (as amended by the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes," approved March 3, 1917) or by Title IX of the Revenue Act of 1917, shall not apply to the transfer of the net estate of any decedent who has died or may die while serving in the military or naval forces of the United States in the present war or from injuries received or disease contracted while in such service, and any such tax collected upon such transfer shall be refunded to the executor.

SEC. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate;

(b) To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower, courtesy, or by virtue of a statute creating an estate in lieu of dower or courtesy;

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has at any time created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death (whether such transfer or trust is made or created before or after the passage of this Act), except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;

(d) To the extent of the interest therein held jointly or as tenants in the entirety by the decedent and any other person, or deposited in banks or other institutions in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have belonged to the decedent;

(e) To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for a fair consideration in money or money's worth; and

(f) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over \$40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life.

SEC. 403. That for the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, or from theft, when such losses are not compensated for by insurance or otherwise, and such amounts reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or any estate, succession, legacy, or inheritance taxes;

(2) An amount equal to the value at the time of the decedent's death of any property, real, personal, or mixed, which can be identified as having been received by the decedent as a share in the estate of any person who died within five years prior to the death of the decedent, or which can be identified as having been acquired by the decedent in exchange for property so received, if an estate tax under the Revenue Act of 1917 or under this Act was collected from such estate, and if such property is included in the decedent's gross estate;

(3) The amount of all bequests, legacies, devises, or gifts, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees exclusively for such religious, charitable, scientific, literary, or educational purposes. This deduction shall be made in case of the estates of all decedents who have died since December 31, 1917; and

(4) An exemption of \$50,000;

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—

(1) That proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated, but in no case shall the amount so deducted exceed 10 per centum of the value of that part of his gross estate which at the time of his death is situated in the United States;

(2) An amount equal to the value at the time of the decedent's death of any property, real, personal, or mixed, which can be identified as having been received by the decedent as a share in the estate of any person who died within five years prior to the death of the decedent, or which can be identified as having been acquired by the decedent in exchange for property so received, if an estate tax under the Revenue Act of 1917 or under this Act was collected from such estate, and if such property is included in that part of the decedent's gross estate which at the time of his death is situated in the United States; and

(3) The amount of all bequests, legacies, devises, or gifts, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any domestic corporation

organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees exclusively for such religious, charitable, scientific, literary, or educational purposes within the United States. This deduction shall be made in case of the estates of all decedents who have died since December 31, 1917; and

No deduction shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section 404 the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States.

For the purpose of this title stock in a domestic corporation owned and held by a nonresident decedent, and the amount receivable as insurance upon the life of a nonresident decedent where the insurer is a domestic corporation, shall be deemed property within the United States, and any property of which the decedent has made a transfer or with respect to which he has created a trust, within the meaning of subdivision (c) of section 402, shall be deemed to be situated in the United States, if so situated either at the time of the transfer or the creation of the trust, or at the time of the decedent's death.

In the case of any estate in respect to which the tax under existing law has been paid, if necessary to allow the benefit of the deduction under paragraph (3) of subdivision (a) or (b) the tax shall be redetermined and any excess of tax paid shall be refunded to the executor.

SEC. 404. That the executor, within sixty days after qualifying as such, or after coming into possession of any property of the decedent, whichever event first occurs, shall give written notice thereof to the collector. The executor shall also, at such times and in such manner as may be required by regulations made pursuant to law, file with the collector a return under oath in duplicate, setting forth (a) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident, of that part of his gross estate situated in the United States; (b) the deductions allowed under section 403; (c) the value of the net estate of the decedent as defined in section 403; and (d) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

Return shall be made in all cases where the gross estate at the death of the decedent exceeds \$50,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in

his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate. The Commissioner shall make all assessments of the tax under the authority of existing administrative special and general provisions of law relating to the assessment and collection of taxes.

SEC. 405. That if no administration is granted upon the estate of a decedent, or if no return is filed as provided in section 404, or if a return contains a false or incorrect statement of a material fact, the collector or deputy collector shall make a return and the Commissioner shall assess the tax thereon.

SEC. 406. That the tax shall be due one year after the decedent's death; but in any case where the Commissioner finds that payment of the tax within one year after the decedent's death would impose undue hardship upon the estate, he may grant an extension of time for the payment of the tax for a period not to exceed three years from the due date. If the tax is not paid within one year and 180 days after the decedent's death, interest at the rate of 6 per centum per annum from the expiration of one year after the decedent's death shall be added as part of the tax.

SEC. 407. That the executor shall pay the tax to the collector or deputy collector. If the amount of the tax can not be determined, the payment of a sum of money sufficient, in the opinion of the collector, to discharge the tax shall be deemed payment in full of the tax, except as in this section otherwise provided. If the amount so paid exceeds the amount of the tax as finally determined, the Commissioner shall refund such excess to the executor. If the amount of the tax as finally determined exceeds the amount so paid, the collector shall notify the executor of the amount of such excess and demand payment thereof. If such excess part of the tax is not paid within thirty days after such notification, interest shall be added thereto at the rate of 10 per centum per annum from the expiration of such thirty days' period until paid, and the amount of such excess shall be a lien upon the entire gross estate, except such part thereof as may have been sold to a bona fide purchaser for a fair consideration in money or money's worth.

The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

SEC. 408. That if the tax herein imposed is not paid within 180 days after it is due, the collector shall, unless there is reasonable

cause for further delay, proceed to collect the tax under the provisions of general law, or commence appropriate proceedings in any court of the United States, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto.

If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution. If any part of the gross estate consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds, in excess of \$40,000, of such policies bear to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio.

SEC. 409. That unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate releasing any or all property of such estate from the lien herein imposed.

If (a) the decedent makes a transfer of, or creates a trust with respect to, any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for a fair consideration in money or money's worth) or (b) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case

the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for a fair consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for a fair consideration in money or money's worth.

SEC. 410. That whoever knowingly makes any false statement in any notice or return required to be filed under this title shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both.

Whoever fails to comply with any duty imposed upon him by section 404, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request of the Commissioner or any collector or law officer of the United States, or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this title, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

LIST OF THE SEVERAL DIVISIONS AND LOCATIONS OF OFFICES OF INTERNAL REVENUE AGENTS IN CHARGE.

(Communications should be addressed :
United States Internal Revenue Agent in Charge,

City. State.)

Name of division.	Territory embraced.	Location of office.
Atlanta.....	Florida and Georgia.....	Atlanta, Ga.
Baltimore.....	Delaware, District of Columbia, Maryland.	Baltimore, Md.
Boston.....	Maine, Massachusetts, New Hamp- shire, and Vermont.	Boston, Mass.
Buffalo.....	Twenty-first and twenty-eighth col- lection districts of New York.	Buffalo, N. Y.
Chicago.....	First collection district of Illinois....	Chicago, Ill.
Cincinnati.....	First and eleventh collection districts of Ohio.	Cincinnati, Ohio.
Cleveland.....	Tenth and eighteenth collection dis- tricts of Ohio.	Cleveland, Ohio.
Columbia.....	South Carolina.....	Columbia, S. C.
Denver.....	Arizona, Colorado, New Mexico, and Wyoming.	Denver, Colo.
Detroit.....	Michigan.....	Detroit, Mich.
Greensboro.....	North Carolina.....	Greensboro, N. C.
Honolulu.....	Hawaii.....	Honolulu, Hawaii.
Huntington.....	West Virginia.....	Huntington, W. Va.
Indianapolis.....	Indiana.....	Indianapolis, Ind.
Louisville.....	Kentucky.....	Louisville, Ky.
Milwaukee.....	Wisconsin.....	Milwaukee, Wis.
Nashville.....	Alabama and Tennessee.....	Nashville, Tenn.
Newark.....	New Jersey.....	Newark, N. J.
New Haven.....	Rhode Island, Connecticut, and fourteenth collection district, New York (except Westchester County, and the twenty-third and twenty- fourth wards of New York City).	New Haven, Conn.
New Orleans.....	Louisiana and Mississippi.....	New Orleans, La.
New York.....	First and second collection districts of New York, Westchester County and twenty-third and twenty- fourth wards of New York City being part of the fourteenth col- lection district of New York.	New York City.
Oklahoma.....	Arkansas and Oklahoma.....	Oklahoma, Okla.
Omaha.....	Iowa and Nebraska.....	Omaha, Nebr.
Philadelphia.....	First and twelfth collection districts of Pennsylvania.	Philadelphia, Pa.
Pittsburgh.....	Twenty-third collection district of Pennsylvania.	Pittsburgh, Pa.
Portland.....	Oregon.....	Portland, Oreg.
Richmond.....	Virginia.....	Richmond, Va.
St. Louis.....	Missouri.....	St. Louis, Mo.
St. Paul.....	Minnesota, North Dakota, and South Dakota.	St. Paul, Minn.
Salt Lake City.....	Idaho, Montana, and Utah.....	Salt Lake City, Utah.
San Antonio.....	Texas.....	San Antonio, Tex.
San Francisco.....	California and Nevada.....	San Francisco, Calif.
Seattle.....	Washington and Alaska.....	Seattle, Wash.
Springfield.....	Eighth collection district of Illinois..	Springfield, Ill.
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TREASURY DEPARTMENT
UNITED STATES INTERNAL REVENUE

REGULATIONS 70
(1926 EDITION)



RELATING TO

ESTATE TAX

UNDER THE

REVENUE ACT OF 1926



WASHINGTON
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1926

These regulations apply to the estates of decedents dying after the effective date of Title III of the Revenue Act of 1926. Estate Tax Regulations 37 (revised January, 1921); Regulations 63 (1922 edition) and Regulations 68 (1924 edition) ~~remain in force and effect only in~~ so far as indicated in Article 110, *infra*.

(II)

REGULATIONS

RELATING TO THE

ESTATE TAX

UNDER

TITLE III OF THE REVENUE ACT OF 1926

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REGULATIONS

ESTATE TAX

[Except as otherwise specified, the section references are to the Revenue Act of 1926]

TITLE III.—ESTATE TAX

SEC. 300. When used in this title—

(a) The term “executor” means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent;

(b) The term “net estate” means the net estate as determined under the provisions of section 303;

(c) The term “month” means calendar month; and

(d) The term “collector” means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner.

SEC. 301. (a) In lieu of the tax imposed by Title III of the Revenue Act of 1924, a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 303) is hereby imposed upon the transfer of the net estate of every decedent dying after the enactment of this act, whether a resident or nonresident of the United States;

1 per centum of the amount of the net estate not in excess of \$50,000;

2 per centum of the amount by which the net estate exceeds \$50,000 and does not exceed \$100,000;

3 per centum of the amount by which the net estate exceeds \$100,000 and does not exceed \$200,000;

4 per centum of the amount by which the net estate exceeds \$200,000 and does not exceed \$400,000;

5 per centum of the amount by which the net estate exceeds \$400,000 and does not exceed \$600,000;

6 per centum of the amount by which the net estate exceeds \$600,000 and does not exceed \$800,000;

7 per centum of the amount by which the net estate exceeds \$800,000 and does not exceed \$1,000,000;

8 per centum of the amount by which the net estate exceeds \$1,000,000 and does not exceed \$1,500,000;

9 per centum of the amount by which the net estate exceeds \$1,500,000 and does not exceed \$2,000,000;

10 per centum of the amount by which the net estate exceeds \$2,000,000 and does not exceed \$2,500,000;

11 per centum of the amount by which the net estate exceeds \$2,500,000 and does not exceed \$3,000,000;

12 per centum of the amount by which the net estate exceeds \$3,000,000 and does not exceed \$3,500,000;

13 per centum of the amount by which the net estate exceeds \$3,500,000 and does not exceed \$4,000,000;

14 per centum of the amount by which the net estate exceeds \$4,000,000 and does not exceed \$5,000,000;

15 per centum of the amount by which the net estate exceeds \$5,000,000 and does not exceed \$6,000,000;

16 per centum of the amount by which the net estate exceeds \$6,000,000 and does not exceed \$7,000,000;

17 per centum of the amount by which the net estate exceeds \$7,000,000 and does not exceed \$8,000,000;

18 per centum of the amount by which the net estate exceeds \$8,000,000 and does not exceed \$9,000,000;

19 per centum of the amount by which the net estate exceeds \$9,000,000 and does not exceed \$10,000,000;

20 per centum of the amount by which the net estate exceeds \$10,000,000.

(b) The tax imposed by this section shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate. The credit allowed by this subdivision shall not exceed 80 per centum of the tax imposed by this section, and shall include only such taxes as were actually paid and credit therefor claimed within three years after the filing of the return required by section 304.

ARTICLE 1. The various statutes.—The Federal estate tax was first imposed by the Act of September 8, 1916. This law was amended by the Act of March 3, 1917 (Title III), by increasing the rate of tax. The Act of October 3, 1917 (Title IX), imposed a tax upon the transfer of the net estate of decedents dying after October 3, 1917, in addition to the tax imposed by the Revenue Act of 1916, as amended. The Revenue Act of 1918 (Title IV), which became effective at 6:55 p. m., Washington, D. C., time, February 24, 1919, reduced the rates applicable to net estates below \$1,500,000, as compared with those of Title IX of the Revenue Act of 1917, and contained a number of provisions not found in any of the prior Acts. The Revenue Act of 1921 (Title IV) became effective at 3:55 p. m., Washington, D. C., time, November 23, 1921. It reenacted without change the rates of Title IV of the Revenue Act of 1918; supplanted all prior Acts as to the estates of decedents dying after the effective date thereof; embodied numerous changes, but contained many of the provisions of the earlier Acts. The Revenue Act of 1924 (Part 1, Title III), which became effective at 4:01 p. m., Washington, D. C., time, June 2, 1924, as originally enacted, increased the rates

applicable to net estates in excess of \$100,000, as compared with those of Title IV of the Revenue Act of 1921; contained provisions not found in any of the prior Acts; but did not include all of the exemptions accorded by the Revenue Act of 1921.

The Revenue Act of 1926 (Title III), which became effective at 10:25 a. m., Washington, D. C., time, February 26, 1926, increased from \$50,000 to \$100,000 the specific exemption to be deducted from the gross estates of resident decedents in determining the net estates for the purposes of the tax and made effective rates ranging from 1 to 20 per centum. The Revenue Act of 1926 amends the rates imposed by Part 1, Title III, of the Revenue Act of 1924, by substituting for such rates the same rates imposed by the Revenue Acts of 1918 and 1921; allows a credit in estates of decedents dying after the enactment of the Revenue Act of 1926, on account of State inheritance tax paid, not to exceed 80 per centum of the tax imposed by the Act; and contains provisions not found in the prior Acts. It is herein referred to as "the statute." References to other statutes are specific.

ART. 2. Transfers and interests reached.—The statute subjects to tax transfers resulting from the decedent's death; transfers made by the decedent in his lifetime, when made in contemplation of or intended to take effect in possession or enjoyment at or after his death, excepting, however, bona fide sales for an adequate and full consideration in money or money's worth; transfers, other than those made bona fide for an adequate and full consideration in money or money's worth, by the decedent in his lifetime where the enjoyment was subject at his death to any change through the exercise of a power, either by him alone or in conjunction with any person, to alter, amend, or revoke, or where any such power was relinquished by the decedent in contemplation of his death. Where, however, the decedent, within two years of his death, but subsequent to the enactment of the Revenue Act of 1926, without an adequate and full consideration in money or money's worth, made a transfer or transfers, by trust or otherwise, to any one or more persons in excess of \$5,000, not admitted or shown to have been made in contemplation of death or intended to take effect in possession or enjoyment at or after death, the aggregate value of the property in excess of \$5,000 transferred to each person shall be deemed and held to have been made in contemplation of death within the meaning of the statute.

There is also subject to tax the homestead and other exemptions; dower, curtesy, or statutory estate in lieu thereof, of the surviving spouse; property held by the decedent and another person or persons where the survivor or survivors take by right of survivorship; insurance receivable by the executor under policies taken out by the de-

cedent upon his life, and insurance so taken out and receivable by all other beneficiaries to the extent that the aggregate amount thereof exceeds \$40,000.

ART. 3. Neither a property nor an inheritance tax.—The Federal estate tax is imposed upon the transfer of the net estate of every person dying after September 8, 1916, determined in the manner prescribed by the applicable law. (See Art. 1.) The tax is not laid upon the property but upon the transfer of the entire net estate and not any particular legacy, devise, or distributive share. The relationship of the beneficiary to the decedent has no bearing upon the question of liability or the extent thereof. The transfer of property is taxable although it escheats to the State for lack of heirs.

ESTATES SUBJECT TO TAX

ART. 4. Description of taxable estates.—The tax is imposed upon the transfer of the net estate. The term "net estate" has a distinct meaning in the statute, signifying the difference between the total value of the gross estate and the total of the authorized deductions. One of the deductions authorized in the estate of a resident decedent is the specific sum of \$100,000 if the decedent died subsequent to 10:25 a. m., Washington, D. C., time, February 26, 1926, the effective date of the Revenue Act of 1926. If the decedent died prior to the effective date of the Revenue Act of 1926, the specific amount authorized to be deducted is only \$50,000. No specific deduction is authorized in the estate of a nonresident decedent.

There is no basis for tax where the value of the gross estate does not exceed the total amount of the authorized deductions, although the filing of a return is required if the decedent was a resident and the value of his gross estate at the date of his death exceeded the specific deduction as above mentioned, or, if a nonresident, any part of his gross estate was situated in the United States. As to the situs of property in estates of nonresidents, see Art. 50.

ART. 5. Definition of "resident" and "nonresident."—The statute provides (paragraph (5) of section 2 (a)) that the term "United States," when used in a geographical sense, includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

A resident is one who, at the time of his death, had his domicile in the United States; or one who was a citizen of the United States at the time of death and with respect to whose property any probate or administration proceedings are had in the United States Court for China. (See Sec. 321 (a).) A missionary who, at the time of death, was serving as such under a foreign missionary board of any religious denomination in the United States, will be presumed to have died a resident of the United States, if domiciled therein at the time

of his or her commission and departure for such service, and not a nonresident merely by reason of his or her intention to permanently remain in such service. (See Sec. 303 (f).) All persons not residents of the United States as above defined, or to whom the presumption just stated does not apply, are nonresidents.

Except as stated above, the statute takes no account of the citizenship of the decedent, but contains different provisions controlling the determination of the tax liability of the estates of residents and nonresidents.

A citizen of the United States is a nonresident if his domicile is in Porto Rico, the Philippine Islands, or other foreign country, whereas a subject or a citizen of a foreign country is a resident if his domicile is in the United States. A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal.

DETERMINATION OF TAX LIABILITY

ART. 6. Manner of determining liability.—The first step in the determination of tax liability is to ascertain the total value of the decedent's gross estate. (See Arts. 10 to 28, inclusive; also Art. 50.) The second step is to subtract from the value of the gross estate the total amount of the deductions authorized in order to arrive at the value of the net estate. (See Arts. 29 to 48, inclusive, as to estates of residents; and Arts. 51 to 55, inclusive, as to estates of nonresidents.) The third step is to obtain the sum of the percentages of successive portions of the net estate, as provided by the applicable taxing act. (See Arts. 7 and 8.)

ART. 7. Rates of tax.—The Revenue Act of 1916, the amendment thereto of March 3, 1917, the Revenue Act of 1917, the Revenue Act of 1918, and the Revenue Act of 1924, as originally enacted, each imposed different rates of tax. The rates imposed by the Revenue Act of 1921 are the same as those prescribed in the Revenue Act of 1918. The rates imposed by the Revenue Act of 1924, as originally enacted, were different from those prescribed in any of the prior Acts, but section 322(a) of the Revenue Act of 1926 amends section 301(a) of the Revenue Act of 1924, effective as of June 2, 1924, so as to impose the same rates prescribed by the Revenue Acts of 1918 and 1921. The rates imposed by the Revenue Act of 1926 are different from those prescribed in any of the prior Acts and are applicable to the estates of decedents dying after 10:25 a. m., Washing-

ton, D. C., time, February 26, 1926. A table of the several rates is given below:

Rates of estate tax

Net estate			1	2	3	4	5
Exceeding	Not exceeding	Amount of block	Act of 1926 (for effective date, see below)	Acts of 1918, 1921, and 1924, as amended. (for effective dates, see below)	Act of 1917 (effective Oct. 4, 1917)	Amendment of Mar. 3, 1917 (effective Mar. 3, 1917)	Act of 1916 (effective Sept. 9, 1916)
			Per cent	Per cent	Per cent	Per cent	Per cent
	\$50,000	\$50,000	1	1	2	1½	1
\$50,000	100,000	50,000	2	2	4	3	2
100,000	150,000	50,000	3	2	4	3	2
150,000	200,000	50,000	3	3	6	4½	3
200,000	250,000	50,000	4	3	6	4½	3
250,000	400,000	150,000	4	4	8	6	4
400,000	450,000	50,000	5	4	8	6	4
450,000	600,000	150,000	5	6	10	7½	5
600,000	750,000	150,000	6	6	10	7½	5
750,000	800,000	50,000	6	8	10	7½	5
800,000	1,000,000	200,000	7	8	12	9	6
1,000,000	1,500,000	500,000	8	10	12	9	6
1,500,000	2,000,000	500,000	9	12	12	9	6
2,000,000	2,500,000	500,000	10	14	14	10½	7
2,500,000	3,000,000	500,000	11	14	14	10½	7
3,000,000	3,500,000	500,000	12	16	16	12	8
3,500,000	4,000,000	500,000	13	16	16	12	8
4,000,000	5,000,000	1,000,000	14	18	18	13½	9
5,000,000	6,000,000	1,000,000	15	20	20	15	10
6,000,000	7,000,000	1,000,000	16	20	20	15	10
7,000,000	8,000,000	1,000,000	17	20	20	15	10
8,000,000	9,000,000	1,000,000	18	22	22	15	10
9,000,000	10,000,000	1,000,000	19	22	22	15	10
10,000,000			20	25	25	15	10

The rates prescribed by the different acts, as set forth in the preceding table, apply to the estates of decedents dying within the following dates:

Column 1, Revenue Act of 1926, effective from and after 10:25 a. m., February 26, 1926, Washington, D. C., time.

Column 2, Revenue Act of 1918, effective from 6:55 p. m., Washington, D. C., time, February 24, 1919, to 3:55 p. m., November 23, 1921; Revenue Act of 1921, effective from 3:55 p. m., Washington, D. C., time, November 23, 1921, to 4:01 p. m., June 2, 1924, Washington, D. C., time, and Revenue Act of 1924, as amended, effective from 4:01 p. m., June 2, 1924, to 10:25 a. m., February 26, 1926, Washington, D. C., time.

Column 3, Revenue Act of 1917, effective from October 4, 1917, to 6:55 p. m., Washington, D. C., time, February 24, 1919, inclusive.

Column 4, amendment of March 3, 1917, effective from March 3, 1917, to October 3, 1917, inclusive.

Column 5, Revenue Act of 1916, effective September 9, 1916, to March 2, 1917, inclusive.

ART. 8. Computation of tax.—For the purpose of computing the tax, the net estate is divisible into blocks, each block being taxed

at a different and increasing rate. The preceding table gives the amount of the various blocks and the applicable rate of tax under each of the taxing acts. For example, the tax upon the net estate of \$1,240,000 of a decedent dying on July 1, 1926, is computed as follows:

Amount of first block	\$50,000 at 1 per cent-----	\$500
Amount of second block	50,000 at 2 per cent-----	1,000
Amount of third block	50,000 at 3 per cent-----	1,500
Amount of fourth block	50,000 at 3 per cent-----	1,500
Amount of fifth block	50,000 at 4 per cent-----	2,000
Amount of sixth block	150,000 at 4 per cent-----	6,000
Amount of seventh block	50,000 at 5 per cent-----	2,500
Amount of eighth block	150,000 at 5 per cent-----	7,500
Amount of ninth block	150,000 at 6 per cent-----	9,000
Amount of tenth block	50,000 at 6 per cent-----	3,000
Amount of eleventh block	200,000 at 7 per cent-----	14,000
Remainder-----	240,000 at 8 per cent-----	19,200

Total net estate-----	\$1,240,000	Total tax-----	\$67,700
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On the following page will be found a table for ascertaining the tax without the detailed computation given above. An illustration of its use is as follows: The net estate of a decedent dying July 1, 1926, amounts to \$1,240,000. By reference to the table it will be seen that the last complete block preceding this amount is \$1,000,000, and that the total tax computed on a million dollars under the rates in force amounts to \$48,500. Upon the remainder of the net estate, \$240,000, the tax is computed at the rate set out in the next following line, or at 8 per cent. The tax on this amount is consequently \$19,200. The following result is thus obtained:

Total tax on-----	\$1,000,000 =	\$48,500
Tax on-----	240,000 =	19,200
Totals-----	\$1,240,000	\$67,700

CREDITS AGAINST ESTATE TAX

ART. 9. (a) Credit for estate, inheritance, legacy, or succession taxes.—Under the provisions of section 301 (b) the estate is entitled, under certain conditions, to a credit against the Federal estate tax for payments of estate, inheritance, legacy, or succession taxes actually made to any of the several States, Territories, or the District of Columbia. The credit allowed is limited to the estates of persons dying after the effective date of the Revenue Act of 1924.

The credit applying to the estates of persons dying after the effective date of the Revenue Act of 1924 and before the effective date of the Revenue Act of 1926 is limited to 25 per centum of the Federal estate tax. If the decedent's death occurred after the effective date of the Revenue Act of 1926, the credit is limited to 80 per centum of the Federal estate tax. No credit may be taken or allowed for any part of such taxes unless the property in respect to which such taxes were imposed is included in the gross estate of the decedent for Federal estate tax. Where the decedent died after the effective date of the Revenue Act of 1926, the taxes allowed as a credit are limited to such taxes as were actually paid and credit therefor claimed within three years after the filing of the return.

The Federal estate tax is due and payable one year after the date of decedent's death, and in making payment of the amount shown by the return to be due the executor may claim credit, subject to the approval of the Commissioner upon audit of the return, of an estimated amount of any such taxes for which the estate will ultimately be entitled to a credit, and pay the balance of the tax disclosed by the return. Where, however, such taxes have been paid prior to the date of payment of the Federal estate tax indicated by the return, the amount thereof actually paid, but not in excess of the 25 or 80 per centum, as the case may be, of the Federal estate tax, may be claimed. Where the executor, in filing the return and discharging the tax indicated thereby, takes credit for any such taxes which the Commissioner determines, either in whole or in part, are not an allowable credit within the meaning of the applicable statute, then such credit or portion thereof taken by the executor at the time of paying the Federal estate tax as is not allowed by the Commissioner should be paid promptly, together with interest thereon, if any has accrued. (See Art. 84.) The executor should exercise care to see that he does not claim a credit in excess of the correct amount.

Where credits are allowed they will be applied against any unpaid tax, and if there then remains an amount not so applied the executor should file a claim for the refund of the amount of the Federal estate tax by which the credit exceeds the unpaid tax, or if the entire

Federal estate tax has been paid, a claim for refund should be filed for the amount of the credit allowed.

Before the Commissioner allows any credit for any estate, inheritance, legacy, or succession taxes, there must be submitted to him the following:

(1) A complete list of the property in respect to which any such taxes were imposed, and the amount thereof paid, certified under the hand and official seal of the officer of the taxing State or Territory having custody of the records pertaining to such taxes.

(2) The certificate of the officer having custody of the records referred to, showing whether a refund of such taxes, or any part thereof, has been authorized, and whether any claim for refund thereof is pending. If any refund has been made the date, amount thereof, and a description of the property or interest in respect to which such refund was made must be shown in such certificate.

(3) An affidavit of the executor stating whether any litigation has been instituted, or appeal taken, or any such action is designed or contemplated by him, or, to his knowledge, by any beneficiary or other person, the final determination of which may affect the amount of such taxes.

The list of the property in respect to which the taxes were imposed may be prepared by the executor, if properly certified by the officer of the State or Territory. If the officer has no seal, his official position may be required by the Commissioner to be established by the submission of a certificate of the proper authority of the taxing State or Territory.

The evidence described above should be filed with the return, but if that is not convenient or possible, then it should be submitted to the investigating officer verifying the return, or if the investigation of the estate has been completed, it should be transmitted to the Commissioner.

The Commissioner may require the submission of such additional proof as is deemed necessary to establish the right to the credit.

Where, subsequent to the allowance of a credit by the Commissioner, a refund is made of any such estate, inheritance, legacy, or succession taxes, the executor, or if the refund is made after the executor's discharge, then any person or persons to whom the refund is made, is required to advise the Commissioner of the date of the refund and the amount thereof, furnish the Commissioner with a description of the property or interest in respect to which the refund was made, and pay the Federal estate tax, if any, due as a result of such refund, together with interest.

Where, either at or subsequent to the final audit of the return, the Commissioner is satisfied that the estate is entitled to a credit for the payment of any estate, inheritance, legacy, or succession taxes, he will make allowance thereof to the extent that such taxes do not exceed 80 per centum (25 per centum if the decedent died prior to the effective date of the Revenue Act of 1926) of the Federal estate tax determined

upon final audit exclusive of the deficiency, if a deficiency is determined, but if such allowance is less than that to which the estate is entitled (due to the existence of a deficiency tax) then the allowance of the balance of the credit will be deferred until it is known that no petition has been or will be filed with the Board of Tax Appeals, or, if a petition is filed, until after the decision of the Board has become final.

(b) **Credit for gift tax.**—Under the provisions of section 322 of the Revenue Act of 1924 the estates of persons dying after the effective date of the Revenue Act of 1924 and before the effective date of the Revenue Act of 1926, are entitled to credit on account of gift tax paid. This credit may be taken for any part of the gift tax which was paid upon gifts made during the calendar years 1924 and 1925 by the decedent in respect to property included in the decedent's gross estate for Federal estate tax purposes. No credit may be taken for any part of the gift tax which was paid in respect to property not included in the gross estate. No credit may be taken or allowed for any gift tax which has been refunded or in respect to which a claim for refund is pending. The credit for the gift tax is allowable even though the value of the gift is deductible for Federal estate tax purposes under section 303 (a) (2) or (3), or section 303 (b) (2) or (3) of the Revenue Act of 1924. Where the Commissioner is satisfied that the estate is entitled to a credit on account of gift tax paid, such credit will be allowed only in accordance with the conditions prescribed in the preceding paragraph.

GROSS ESTATE—GENERAL

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

(a) To the extent of the interest therein of the decedent at the time of his death.

ART. 10. Character of interests included.—It is designed by the foregoing provision of the statute that there shall be included in the gross estate the value of all property of the decedent whether real or personal, tangible or intangible, the beneficial ownership of which was in the decedent at the time of his death.

Where the decedent died prior to 10:25 a. m., Washington, D. C., time, February 26, 1926, the test which determines that the value of a given interest is to be included in the gross estate under the provisions of subdivisions (a) of the corresponding sections of the Revenue Acts prior to that of 1926, is whether the property, after death, shall be subject to: (1) Payment of the charges against the estate; (2) payment of the expenses of administration; and (3) distribution as a part of the estate. This test is not applicable if the decedent died subsequent to the effective date of the Revenue Act of 1926.

ART. 11. Specific property to be included.—The value of all real property situated in the United States and owned by the decedent at the date of his death should be included in the gross estate, whether the decedent was a resident or a nonresident, and whether the property came into the possession and control of the executor or administrator or passed directly to heirs or devisees. Where the decedent was a resident, the value of all personal property owned by him should be included, wherever situated. Where the decedent was a nonresident, the value of so much of his personal property as had its situs in the United States at the time of his death should be included, and the value of his entire gross estate, wherever situated, should be disclosed, if deductions are claimed. (See Arts. 52 to 54.) As to the situs of the personal property of nonresident decedents, see Article 50.

The value of a vested remainder should be included in the gross estate. Nothing should be included, however, on account of a contingent remainder where the contingency does not happen in the lifetime of the decedent, and the interest consequently lapses at his death. Nor should anything be included on account of an interest or an estate limited for the life of the decedent. There should be included, however, the value of an annuity payable to, or an interest or an estate vested in, the decedent for the life of another person who survives him. For rules in valuing such remainders, annuities, and interests or estates *pur autre vie*, see Article 13, subdivision (10).

A cemetery lot owned by the decedent is part of his gross estate, but its value is limited to the salable value of such part of it as is not designed for the interment of the decedent or members of his family. Salary due the decedent, and rents and interest accrued at the time of his death, whether then payable or not, and unpaid matured coupons, should be included. The value of notes or other claims held by the decedent should be included, though they are canceled by his will. As to the valuation of notes and claims, see Article 13, subdivisions (1) and (5). All bonds, including Federal, State, and municipal, should be included. (See Art. 12 for manner of listing and describing property returned.)

Dividends on either common or preferred stock should be included only where declared prior to the decedent's death and not reflected in the market value of the stock on the day of death. Thus dividends, both declared and payable to holders of record on a date prior to the decedent's death should be included, provided the stock is valued "ex dividend" on the date of death.

Example: A 5 per cent dividend upon stock is declared March 1, payable on April 1, to stockholders of record on March 15. If the death occurred on March 10, and the market value on that day was 90, the value to be returned for both stock and dividend is 90, the dividend being reflected in the market value of the stock. If the

death occurred on March 20, the dividend is not reflected in the market value, and must be returned in addition to the market value of the stock on March 20.

ART. 12. **Description of property listed on return.**—In listing upon the return the property comprising the gross estate (other than household and personal effects, as to which see subdivision (9) of Article 13), the description thereof should be such that the property may be readily identified. Thus, a legal description should be given of each parcel of real estate, its area, and, if improved, a short statement of the character of the improvements. Where, however, the property is situated in a city and has a street number, the name of the city, the street, and the number should be given instead of a legal description. Description of bonds should include number held, principal amount, name of obligor, date of maturity, rate of interest, date or dates on which interest is payable, series number where there is more than one issue, the exchange upon which listed, or the principal business office of the corporation, if unlisted. Description of stocks should include number of shares, whether common or preferred, and, if preferred, what issue thereof, par value, quotation at which returned, exact name of corporation, and, if the stock is unlisted, the location of the principal business office and State in which incorporated and the date of incorporation. If a listed security, state principal exchange upon which sold. Description of notes should include name of maker, date on which given, date of maturity, amount of principal, amount of principal unpaid, rate of interest and whether simple or compound, date to which interest has been paid, and amount of unpaid interest. Description of bank accounts should disclose name and address of depository, amount on deposit, whether a checking, savings, or a time deposit account, rate of interest, if any payable, amount of interest accrued and payable, and serial number. Description of life insurance should give the name of the insurer, number of policy, face value, name of beneficiary, and amount paid or payable thereunder. In describing an annuity, the name and address of the grantor of the annuity should be given, or if payable out of a trust or other funds such a description as will fully identify it. If payable for a term of years, the duration of the term and the date on which it began should be given, and if payable for the life of a person other than the decedent, the date of birth of such person should be stated. Judgments should be described by giving the title of the cause and the name of the court in which rendered, date of judgment, name and address of judgment debtor, amount of judgment, rate of interest to which subject, whether any payments have been made thereon, and, if so, when and in what amounts.

VALUATION OF PROPERTY

ART. 13. *Valuations.*—(1) *General.*—The value of all property includable in the gross estate is the fair market value thereof at the time of the decedent's death. The fair market value is the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. Where the property is sold within a reasonable period after the decedent's death, and it is shown that the selling price reflects the fair market value thereof as of the date of decedent's death, the selling price will be accepted. Neither depreciation nor appreciation in value subsequent to the date of decedent's death will be considered. All relevant facts and elements of value should be considered in every case.

(2) *Real estate.*—The property should not be returned at the local assessed value thereof unless such value represents the fair market value as of the date of decedent's death. (See Art. 12 for manner of listing and describing real estate.)

(3) *Stocks and bonds.*—The value of stocks and bonds listed upon a stock exchange should be determined by taking the mean between the highest and lowest quoted selling prices upon the date of death. If the decedent died on a Sunday or holiday, the transaction of the next previous business day will govern. If there were no sales on the date of death, the values should be determined by taking the mean between the highest and lowest sales upon the nearest date either before or after the date of death, if within a reasonable period. If the security is listed upon more than one exchange, the records of the principal exchange should be employed. In valuing listed stocks and bonds the executor should observe care to consult accurate records to obtain values as of the date of death.

If the securities are not listed upon an exchange, but are dealt in actively through brokers, or have an active market, the value should be determined by taking the sale price as of the date of death, or, where there was no sale on that date, of the nearest date thereto upon which a sale was made, if within a reasonable period. Securities in which there are occasional transactions, but which are not dealt in actively enough to clearly establish a fair market value, should be valued upon the basis of the nearest sale to the date of death, provided such sale was made in the normal course of business between a willing buyer and a willing seller and within a reasonable period of the date of the decedent's death. Where quotations are obtained from brokers, or evidence as to the sale of securities is obtained from the officers of the issuing companies, the executor is requested to preserve in his files the letters furnishing such quotations or evidence of sale for inspection when the return is verified by an investigating officer.

Where securities are regularly quoted on a bid and asked basis, and actual sales are not available, the bid price as of the date of death, or the nearest date thereto where not quoted as of the date of death, will be accepted as the value. In the case of corporate or other bonds for which there is no active market, the value is to be determined by giving consideration to the soundness of the security, the interest yield, the date of maturity, and other relevant factors.

Where there is no active market for a particular security (whether listed or unlisted), or where sales thereof made from time to time are greatly disproportionate to the holdings of the decedent, and the executor, in good faith, proceeds within a reasonable time to make a bona fide sale or sales of any such securities, the amount so realized will be accepted as the value. Sales, however, of only a small portion of a large holding, or sales made without a real effort to secure the widest market possible, or sales made merely for the purpose of fixing value, will not be considered as conclusive.

Stock in a close corporation should be valued upon the basis of the company's net worth, earning and dividend-paying capacity, and all other factors having a bearing upon the value of the stock. Complete financial and other data upon which the estate bases its valuation should be submitted in duplicate with the return.

Where as to any particular security conditions of sale or ownership are such that the fair market value, determined as already indicated, would not afford a proper basis for valuation, the Commissioner, on final audit, will establish the value by considering all relevant factors. In any case where the estate contends that the value, if established by the general rules already given, is not the fair market value as of the date of death the evidence upon which it bases its contention should be filed with the return.

The full value of securities pledged to secure a loan should be included in the gross estate. If the decedent had a trading account with a broker, all securities belonging to the decedent and held by the broker at the date of death must be included at their fair market value on that date. Securities purchased on margin for the decedent's account and held by the broker should also be returned at their fair market value on the date of death. The amount of the decedent's indebtedness to the broker or other person with whom securities were pledged will be allowed as a deduction from the gross estate in accordance with Articles 29, 36, and 52. (See Art. 12 for manner of listing and describing stocks and bonds.)

(4) *Interest in business.*—Care should be taken to arrive at an accurate valuation of any business in which the decedent was interested, whether as partner or proprietor. A fair appraisal as of the date of death should be made of all the assets of the business, tangible and intangible, including good will, and the business should be given

a net value equal to the amount which a willing purchaser, whether an individual or corporation, would pay therefor to a willing seller in view of the net value of the assets and the demonstrated earning capacity. Special attention should be given to fixing an adequate figure for the value of the good will of the business in all cases where the decedent has not agreed, for an adequate and full consideration in money or money's worth, that his interest therein shall pass at his death to his surviving partner or partners.

The factors hereinbefore stated relative to the valuation of other property, where applicable, will be considered in determining the valuation of an interest in a business held as proprietor or partner. All evidence bearing upon such valuation should be submitted with the return, including copies of reports in any case where examinations of the business have been made by accountants, engineers, or any technical experts as of or near the date of decedent's death.

(5) *Notes, secured and unsecured.*—The value of notes, whether secured or unsecured, will be presumed to be the amount of unpaid principal, plus accrued interest to the date of decedent's death, unless the executor establishes a lower value, or it is shown that they are worthless. Unless returned at face value, plus accrued interest, it must be shown by satisfactory evidence that the note is worth less than the unpaid amount because of the interest rate, or date of maturity, or other cause, or that it is uncollectible, either in whole or in part, by reason of the insolvency of the party or parties liable, or for other cause, and that the property, if any, pledged or mortgaged as security is insufficient to satisfy it.

(6) *Cash on hand or on deposit.*—The amount of cash belonging to the decedent, either in his possession at the date of death or in the possession of another, should be included, together with such interest, if any, payable thereon at the date of the decedent's death. Bank accounts should be returned in the amount on deposit to the credit of the decedent at the date of death. If checks then outstanding, given in discharge of bona fide, legal obligations of the decedent, incurred for an adequate and full consideration in money or money's worth, and not as transfers coming within the provisions of section 302 (c) or (d), are subsequently honored by the bank and charged to the account, the balance remaining may be returned, provided the payments effected thereby are not claimed as deductions from the gross estate. Interest which the bank agreed to pay upon condition that the money remain on deposit for a period of time which expired subsequent to the decedent's death, should not be included.

(7) *Intangibles.*—Intangibles should be valued in accordance with the rule laid down under subdivision (1) of this article.

(8) *Other property.*—With respect to all other property, excepting household and personal effects, concerning which see subdivision

(9) of this article, the executor should ascertain and return the fair market value thereof as of the date of decedent's death. Livestock, farm machinery, harvested and growing crops should be itemized and the value of each item separately returned. As to property sold subsequent to death see subdivision (1) of this article.

(9) *Household and personal effects*.—All household and personal effects of the decedent should be included at the price which a willing buyer would pay to a willing seller. A room by room itemization is desirable. All the articles should be named specifically, except that a number of articles contained in the same room, none of which has a value in excess of \$50, may be grouped. A separate value should be given for each article named. The executor may furnish, in lieu of an itemized list, a sworn statement, in duplicate, setting forth the aggregate value of the property as appraised by a competent appraiser, or appraisers of recognized standing and ability, or by a dealer or dealers in the class of personalty involved.

If, however, there is included among the household and personal effects, articles having marked artistic or intrinsic value of a total value in excess of \$2,000, such as jewelry, silverware, paintings, etchings, engravings, antiques, books, statuary, vases, oriental rugs, collections of coins and stamps, the appraisal of an expert or experts, under oath, should be filed with the return on Form 706, accompanied by the affidavit, in duplicate, of the executor as to the completeness of the itemized list of such property and of the disinterested character and the qualifications of the appraiser or appraisers.

Where it is desired to effect distribution or sale of any portion of the household or personal effects in advance of an investigation by a special officer of the Bureau of Internal Revenue, as provided in Article 67, information to that effect should be given to the supervising internal revenue agent or the internal revenue agent in charge for the division wherein the decedent was domiciled at the date of his death, or if such household and personal effects were not located in such division, then to the Commissioner. The statement to the supervising internal revenue agent or to the internal revenue agent in charge should be accompanied by a verified appraisal of such property and an affidavit of the executor as to the completeness of the list of such property and the qualifications of the appraiser, as already referred to, but such an appraisal and affidavit need not be in duplicate. If a personal inspection by a special officer of the bureau is not deemed necessary, the executor will be so advised. This procedure is designed to facilitate disposition of such property and to obviate future expense and inconvenience to the estate by affording the Commissioner an opportunity to make an investigation should one be deemed necessary prior to sale or distribution. (For location of the offices of the several supervising internal revenue

agents and the internal revenue agents in charge and the territory embraced in each division, see Appendix.)

Where expert appraisers are employed care should be taken to see that they are reputable and of recognized competency to appraise the particular class of property involved. In the appraisal, books in sets by standard authors should be listed in separate groups. In listing paintings having artistic value, the size, subject, and artist's name should be stated. In the case of oriental rugs, the size, make and general condition should be given. Sets of silverware should be listed in separate groups. Groups or individual pieces of silverware should be weighed and the weights given in troy ounces. In arriving at the value of silverware, the appraisers should take into consideration its antiquity, utility, desirability, condition and obsolescence.

(10) *Annuities, life, remainder, and reversionary interests.*—Where the decedent was entitled to receive an annuity of a definite amount during the lifetime of another person, payable at the end of annual periods, its present worth at the time of the decedent's death must be computed upon the basis of the value of a life annuity at the age of the other person. The table marked "A," a part of this subdivision, should be used for this computation. The amount payable annually should be multiplied by the figure in column 2 of the table opposite the number of years in column 1 nearest to the actual age of the other person.

Example: The decedent received under the terms of his father's will an annuity of \$10,000 for the life of his elder brother. The brother at the decedent's death was 40 years 8 months old. By reference to the table the figure in column 2 opposite 41 years, the number nearest to the brother's age, is found to be 14.86102. The present worth of the annuity is therefore \$148,610.20.

Where the decedent was entitled to receive the annuity during a specified number of years, the table marked "B," a part of this subdivision, should be used.

Example: The decedent received under the terms of his father's will an annuity of \$10,000 for a period of 20 years, 15 of which had expired at the decedent's death. By reference to the table it is found that the figure in column 2 opposite 5 years, the unexpired portion of the 20-year period, is 4.45182. The present worth of the annuity is, therefore, \$44,518.20 (4.45182 multiplied by 10,000).

Where the decedent was entitled to receive the entire income of certain property during the life of another person, or for a term of years, and the annual rate of income for a period equal to or exceeding the life expectancy of such other person or such term of years, is fixed or definitely determinable at the time of the decedent's death, then the present worth of decedent's right to such income should be computed as explained above in the case of an annuity.

Example: The decedent's father placed \$100,000 in trust, with directions that it be invested in State and municipal bonds and the entire income paid to the decedent during the life of his elder brother, who was 41 years old at the decedent's death. Before the decedent's death the money was invested in State and municipal bonds maturing at dates beyond such elder brother's life expectancy, and yielding annually an income of \$5,000. In this case the rate of income is definitely determinable. By reference to the table, it is found that the present worth of an income of \$5,000, dependent upon the life of a person 41 years of age, is \$74,305.10 (14.86102 multiplied by 5,000).

Where the rate of annual income is not determinable, or where the decedent was entitled merely to the personal use of nonincome-bearing property, a hypothetical annuity at a rate of 4 per cent of the value of the property should be made on the basis of the calculation.

Example: The decedent died before a fund of \$100,000, of which he was entitled to receive the income during the life of a person 41 years old, had been invested by the trustees. The value of a hypothetical annuity of \$4,000, dependent upon the life of such a person, is indicated by the table to be \$59,444.08 (14.86102 multiplied by 4,000).

Where the decedent had a remainder interest in property subject to the life estate of another, and such interest constituted an asset of his estate, the present worth of the remainder interest at the time of death should be obtained by multiplying the value of the property at the time of death by the figure in column 3 of Table A opposite the number of years nearest to the age of the life tenant. Where the remainder interest is subject to an estate for a term of years Table B should be used.

Example: The decedent was entitled to receive property worth \$50,000 upon the death of his elder brother, to whom the income for life had been bequeathed. The brother at the time of the decedent's death was 31 years old. By reference to the table it is found that the figure in column 3, opposite 31 years, is 0.31262. The present worth of the remainder interest is, therefore, \$15,631.

If the annuity is payable semiannually, quarterly, or at the beginning of the year, or for more than one life, or in any other manner rendering inapplicable Table A or Table B (also a part of this subdivision) the case may be stated to the Commissioner, who will thereupon make the computation and advise the executor thereof. In making such calculations where life interests or remainders upon life interests are involved use will be made of the Actuaries' or Combined Experience Table of Mortality, as extended (that being the basis of Table A), with interest at 4 per centum per annum compounded annually.

TABLE A

Table, single life, 4 per cent, showing the present worth of an annuity, or a life interest, and of a reversionary interest

1	2	3	1	2	3
Age	Annuity, or present value of \$1 due at the end of each year during the life of a person of specified age	Reversion, or present value of \$1 due at the end of the year of death of a person of specified age	Age	Annuity, or present value of \$1 due at the end of each year during the life of a person of specified age	Reversion, or present value of \$1 due at the end of the year of death of a person of specified age
	<i>Annuity</i>	<i>Reversion</i>		<i>Annuity</i>	<i>Reversion</i>
0	\$14. 72829	\$0. 39507	51	\$12. 17919	\$0. 49311
1	17. 30771	. 29586	52	11. 88408	. 50446
2	18. 69578	. 24247	53	11. 58531	. 51595
3	19. 15901	. 22465	54	11. 28325	. 52757
4	19. 41226	. 21491	55	10. 97789	. 53931
5	19. 55301	. 20950	56	10. 66982	. 55116
6	19. 61731	. 20703	57	10. 35931	. 56310
7	19. 62502	. 20673	58	10. 04630	. 57514
8	19. 61097	. 20727	59	9. 73131	. 58726
9	19. 53413	. 21022	60	9. 41474	. 59943
10	19. 45359	. 21332	61	9. 09765	. 61163
11	19. 36943	. 21656	62	8. 78052	. 62383
12	19. 28184	. 21993	63	8. 46412	. 63600
13	19. 19065	. 22344	64	8. 14888	. 64812
14	19. 09590	. 22708	65	7. 83552	. 66017
15	18. 99764	. 23086	66	7. 52476	. 67212
16	18. 89569	. 23478	67	7. 21699	. 68397
17	18. 79010	. 23884	68	6. 91298	. 69565
18	18. 68070	. 24305	69	6. 61301	. 70719
19	18. 56751	. 24740	70	6. 31716	. 71857
20	18. 45038	. 25191	71	6. 02612	. 72976
21	18. 32932	. 25656	72	5. 74003	. 74077
22	18. 20416	. 26138	73	5. 45928	. 75157
23	18. 07471	. 26636	74	5. 18402	. 76215
24	17. 94097	. 27150	75	4. 91463	. 77251
25	17. 80274	. 27682	76	4. 65125	. 78264
26	17. 65984	. 28231	77	4. 39383	. 79254
27	17. 51224	. 28799	78	4. 14286	. 80220
28	17. 35968	. 29386	79	3. 89858	. 81159
29	17. 20225	. 29991	80	3. 66071	. 82074
30	17. 03961	. 30617	81	3. 42900	. 82965
31	16. 87176	. 31262	82	3. 20258	. 83836
32	16. 69846	. 31929	83	2. 98024	. 84691
33	16. 51964	. 32617	84	2. 76106	. 85534
34	16. 33503	. 33327	85	2. 54366	. 86371
35	16. 14437	. 34060	86	2. 32795	. 87200
36	15. 94755	. 34817	87	2. 11384	. 88024
37	15. 74427	. 35599	88	1. 90115	. 88842
38	15. 53421	. 36407	89	1. 69107	. 89650
39	15. 31722	. 37241	90	1. 48540	. 90441
40	15. 09295	. 38104	91	1. 28432	. 91214
41	14. 86102	. 38996	92	1. 09024	. 91961
42	14. 62122	. 39918	93	. 90647	. 92667
43	14. 37356	. 40871	94	. 73687	. 93320
44	14. 11860	. 41852	95	. 58435	. 93906
45	13. 85713	. 42857	96	. 46182	. 94378
46	13. 58958	. 43886	97	. 36698	. 94742
47	13. 31698	. 44935	98	. 24038	. 95229
48	13. 03942	. 46002	99	. 00000	. 96154
49	12. 75716	. 47088			
50	12. 47032	. 48191			

TABLE B

Table showing the present worth at 4 per cent of an annuity for a term-certain, and of a reversionary interest postponed for a term-certain

1	2	3	1	2	3
Num- ber of years	Present worth of an annuity of \$1, payable at the end of each year, for a certain number of years	Present worth of \$1, payable at the end of a certain number of years	Num- ber of years	Present worth of an annuity of \$1, payable at the end of each year, for a certain number of years	Present worth of \$1, payable at the end of a certain number of years
	<i>Annuity</i>	<i>Reversion</i>		<i>Annuity</i>	<i>Reversion</i>
1	\$0. 96154	\$0. 961538	16	\$11. 65229	\$0. 533908
2	1. 88609	. 924556	17	12. 16567	. 513373
3	2. 77509	. 888996	18	12. 65929	. 493628
4	3. 62989	. 854804	19	13. 13394	. 474642
5	4. 45182	. 821927	20	13. 59032	. 456387
6	5. 24214	. 790314	21	14. 02916	. 438834
7	6. 00205	. 759918	22	14. 45111	. 421955
8	6. 73274	. 730690	23	14. 85684	. 405726
9	7. 43533	. 702587	24	15. 24696	. 390121
10	8. 11089	. 675564	25	15. 62208	. 375117
11	8. 76047	. 649581	26	15. 98277	. 360689
12	9. 38507	. 624597	27	16. 32958	. 346816
13	9. 98565	. 600574	28	16. 66306	. 333477
14	10. 56312	. 577475	29	16. 98371	. 320651
15	11. 11839	. 555265	30	17. 29203	. 308319

GROSS ESTATE—DOWER AND CURTESY

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—* * *

(b) To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower, curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy; * * *

ART. 14. Dower and curtesy.—This provision includes dower and curtesy and all interests created by statute in lieu thereof, although the estate or interest so created is different in character. The effect of the provision is to require the inclusion of the full value of the property, without deduction of the value of the interest of the surviving husband or wife. This provision does not apply to the estate of any decedent dying after September 8, 1916, and prior to 6:55 p. m., February 24, 1919 (the effective date of Title IV of the Revenue Act of 1918), unless the property has its situs in a jurisdiction wherein dower, curtesy, or the statutory interest in lieu thereof, is subject to the payment of charges against the estate, the expenses of its administration, and is subject to distribution as part of the estate, or unless there has been an election to take property devised or bequeathed in lieu of dower, curtesy, or such statutory interest, and the property so taken has its situs in a jurisdiction by the laws of which it is subject to the payment of such charges and expenses, and to distribution as a part of the estate.

GROSS ESTATE—TRANSFERS BY DECEDENT IN HIS LIFETIME

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated— * * *

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Where within two years prior to his death but after the enactment of this Act and without such a consideration the decedent has made a transfer or transfers, by trust or otherwise, of any of his property, or an interest therein, not admitted or shown to have been made in contemplation of or intended to take effect in possession or enjoyment at or after his death, and the value or aggregate value, at the time of such death, of the property or interest so transferred to any one person is in excess of \$5,000, then, to the extent of such excess, such transfer or transfers shall be deemed and held to have been made in contemplation of death within the meaning of this title. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death but prior to the enactment of this Act, without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;

(d) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. The relinquishment of any such power, not admitted or shown to have been in contemplation of the decedent's death, made within two years prior to his death but after the enactment of this Act without such a consideration and affecting the interest or interests (whether arising from one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggregate value, at the time of such death, in excess of \$5,000, then, to the extent of such excess, such relinquishment or relinquishments shall be deemed and held to have been made in contemplation of death within the meaning of this title; * * *

(i) If any one of the transfers, trusts, interests, rights, or powers, enumerated and described in subdivisions (c), (d), and (f) of this section is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

ART. 15. Transfers during life.—Except bona fide sales for an adequate and full consideration in money or money's worth, all trans-

fers made by the decedent at any time are taxable if made in contemplation of or intended to take effect in possession or enjoyment at or after his death, or if the enjoyment of the property or the interest transferred was subject at the date of his death to change by the exercise of any power to alter, amend, or revoke, or if any such power was relinquished by the decedent in contemplation of his death. To constitute such a sale it must have been made in good faith, and the price must have been an adequate and full equivalent, and reducible to a money value. Where the price was less than an adequate and full equivalent only the excess of the fair market value of the property, as of the date of the decedent's death, over the price received by the decedent should be included in the gross estate. The value of property, where title was transferred by the decedent before September 9, 1916, is to be included in his gross estate only if his death occurred after the effective date of the Revenue Act of 1918.

Where a transfer, by trust or otherwise, was made by a written instrument, duplicate copies thereof should be filed with the return. If of public record, one of the copies should be certified; if not of record, one copy should be verified. Where the decedent was a non-resident, only one copy, certified or verified, need be filed.

TRANSFERS IN CONTEMPLATION OF DEATH

ART. 16. Nature of transfer.—The words “in contemplation of death” do not mean, on the one hand, a general expectation of death such as all persons entertain, nor, on the other, is the meaning limited to an expectation of immediate death. A transfer, however, is made in contemplation of death wherever the person making it is influenced to do so by such an expectation of death, arising from bodily or mental conditions, as prompts persons to dispose of their property to those whom they deem proper objects of their bounty. Such a transfer is taxable, although the decedent parts absolutely and immediately with his title to and possession and enjoyment of the property.

Transfers made by the decedent in his lifetime, other than transfers intended to take effect in possession or enjoyment at or after death (see Art. 17), excepting bona fide sales for an adequate and full consideration in money or money's worth, must be returned for tax, or disclosed in the return, as follows (see also Art. 20):

- (1) *Transfers made in contemplation of death.*—The executor must return for tax the value, as of the date of the decedent's death, of all property transferred by the decedent at any time in contemplation of death.

(2) *Transfers not admitted to have been made in contemplation of death.*—

(a) The executor is required to disclose in the return all transfers made at any time by the decedent of an amount or value of \$5,000, or more. Any such transfer made within two years of the decedent's death, but before the effective date of the Revenue Act of 1926, and constituting a material part of decedent's property and in the nature of a final disposition or distribution thereof, is deemed to have been made in contemplation of death within the meaning of the statute. Where the executor contends that the transfer was not made in contemplation of death he must file with the return sworn statements, in duplicate, of all the material facts, including, among other things, the decedent's motive in making the transfers and his mental and physical condition at that time, and one copy of the death certificate.

(b) The executor is required to return for tax all transfers made by the decedent within two years prior to his death, but after the effective date of the Revenue Act of 1926, to the extent that the value thereof to any one person is in excess of \$5,000, even though the transfer is not admitted to have been made in contemplation of death. The entire value of the transfers should be disclosed in the return. Example: The decedent died April 15, 1926, having transferred on March 1, 1926, a farm to his son, A, and certain shares of stock to his son, B, the values as of date of death, being \$20,000 and \$30,000, respectively. Both transfers should be listed on the return and the entire value of the transfers disclosed but the taxable portion of the value of the transfers will be \$15,000, and \$25,000, respectively. This example is applicable only in case the transfer is not admitted or shown to have been made in contemplation of death.

The fact that a gift was made as an advancement, to be taken into account upon the final distribution of the decedent's estate, is not, in and of itself, determinative of its taxability.

TRANSFERS INTENDED TO TAKE EFFECT IN POSSESSION OR ENJOYMENT AT OR AFTER DEATH

ART. 17. General.—All transfers at any time made by the decedent, other than bona fide sales for an adequate and full consideration in money or money's worth, which were intended to take effect in possession or enjoyment at or after his death, are taxable, and the value, as of the date of the decedent's death, of the property so transferred must be returned as a part of the gross estate.

ART. 18. Reservation of income or an annuity.—A transfer, not amounting to a bona fide sale for an adequate and full consideration in money or money's worth, is taxable where the decedent reserved to himself during life the entire income of the property transferred. In such a case the transfer of the principal takes effect in possession and enjoyment at the death of the decedent, and the value of the entire property should be included in the gross estate.

Where the decedent reserved only a portion of the income, only a corresponding proportion of the value of the property should be included in the gross estate, unless, however, the possession or enjoyment of the remaining portion of the transferred property, or a part thereof, was postponed until at or after the decedent's death, in which case there should also be included in the gross estate such remaining portion or part thereof, as the case may be. Thus, for example, if the reservation was one-half of the income then one-half of the value of the transferred property should be included, and if, in addition to such reservation, it was intended by the decedent that possession or enjoyment of the remaining portion of the property should be postponed until at or after his death, then the value of the entire property should be included.

The rule would be the same, so far as concerns the proportion of the property to be included in the gross estate, if an annuity were reserved, whether out of the property transferred or the income therefrom, or whether the payment thereof was only a personal obligation of the transferee by virtue either of an express or implied agreement.

Where the decedent reserved out of the property transferred a definite annuity and the income from the property was indefinite, or indeterminable, or the property was nonincome bearing, there should be included in the gross estate that portion of the value of the property transferred (not to exceed the entire value as of the date of the decedent's death) equal to the capitalization of the annuity at 4 per cent. Example: The decedent transferred a farm valued at \$35,000 to his son, the income from the farm being uncertain and indefinite, the son agreeing to pay to the decedent \$1,000 per annum during the decedent's lifetime. Capitalizing the annuity of \$1,000 at 4 per cent a fund which will yield the annuity is determined to be of the value of \$25,000. There should be included in the gross estate on account of the transfer \$25,000. If the value of the farm was \$20,000 the amount to be included is \$20,000.

Where in any case the transfer was made in contemplation of death, the value of the transferred property, as of the date of

the decedent's death, should be included in the gross estate whether or not the transfer was one intended to take effect in possession or enjoyment at or after death. (See Art. 16.)

Where there was no reservation of income or an annuity but it was intended that possession or enjoyment of the transferred property, or a portion thereof, should be postponed until at or after decedent's death, then the value of the entire property or of such portion, as the case may be, should be included in the gross estate. Thus a gift of the principal intended to take effect either in possession or enjoyment at or after the decedent's death is taxable, although the income or annuity was payable during the decedent's life to some one other than himself. Example: The decedent transferred property to his son, the latter to receive the income during the decedent's life or agreeing to pay the income to his mother during the decedent's life. The transfer to the son in either case is taxable.

TRANSFERS—WHERE ENJOYMENT SUBJECT TO CHANGE THROUGH POWER TO ALTER, AMEND, OR REVOKE; OR WHERE SUCH POWER IS RELINQUISHED IN CONTEMPLATION OF DEATH

ART. 19. Power to change enjoyment.—The value of property transferred, other than by a bona fide sale for an adequate and full consideration in money or money's worth, constitutes a part of the gross estate if at the time of the decedent's death the enjoyment thereof was subject to any change through a power, exercisable either by the decedent alone or in conjunction with any person, to alter, amend, or revoke.

ART. 20. Power relinquished in contemplation of death.—Where property was transferred by the decedent, who reserved a power to alter, amend, or revoke the transfer, and such power was relinquished in contemplation of death, the value of the property should be included in the gross estate. (See also Art. 16.) The relinquishment of any such power not admitted or shown to have been in contemplation of death is deemed and held to have been made in contemplation of death within the meaning of the statute if such power was relinquished within two years prior to the decedent's death, but after the enactment of the Revenue Act of 1926, without an adequate and full consideration in money or money's worth to the extent that the value of the interest of any one beneficiary affected at the time of the decedent's death exceeded \$5,000 and such excess should be included in the gross estate.

TRANSFERS—VALUATION

ART. 21. Valuation of property transferred.—The value must be determined as of the date of the decedent's death. (See Art. 13.)

Where the transferee makes additions to the property, or betterments, the enhanced value of the property at that date, due to such additions or betterments, is not to be included.

GROSS ESTATE—PROPERTY HELD JOINTLY

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated— * * *

(e) To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: *Provided*, That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further*, That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants; * * *

ART. 22. *Property held jointly or as tenants by the entirety.*—The foregoing provisions of the statute extend to joint ownerships, wherein the right of survivorship exists, and specifically reaches property held jointly by the decedent and any other person or persons, or by the decedent and spouse as tenants by the entirety, or deposited with any person or institution carrying on a banking business in the name of the decedent and any other person and payable to either or the survivor, provided the decedent contributed towards the acquisition of the property so held or deposited, or acquired it by gift, bequest, devise, or inheritance. The statute applies to all classes of property, whether real or personal, where the survivor takes the entire interest therein by right of survivorship, and no interest therein forms a part of the decedent's estate for purposes of administration. It does not include property held by the decedent and any other person or persons as tenants in common.

ART. 23. *Taxable portion.*—The entire value of such property is *prima facie* a part of the decedent's gross estate, but as it is not the intent of the statute that there should be so included a greater part

or proportion thereof than is represented by an outlay of funds, which, in the first instance, were decedent's own, or more than a fractional part equal to that of the other joint owner where neither had parted with any consideration in its acquirement, facts, which in a given case bring it within any one of the exceptions enumerated in the statute, may be submitted by the executor.

Whether the value of the entire property, or only a part, or none of it, enters into the make-up of the gross estate, depends upon the following considerations: (1) So much of the property (whether the whole, or a part thereof) as originally belonged to the other joint owner, and which at no time in the past had been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth, forms no part of the decedent's gross estate. (2) Where the facts are otherwise the same as in (1), but the decedent paid to such other joint owner a consideration for the interest by him (the decedent) acquired in the property, then such portion of the value of the property, proportionate to the consideration so paid, constitutes a part of the gross estate. (3) Where the property, or a part thereof, or a part of the consideration wherewith it was acquired, had at any time been acquired by the other joint owner from the decedent as a gift, or for less than an adequate and full consideration in money or money's worth, then such portion of the value of the entire property, proportionate to the consideration, if any, which in the first instance was paid from such other joint owner's own funds, forms no part of the gross estate. (4) Where the property was acquired by the decedent and his or her surviving spouse as tenants by the entirety by gift, will, or inheritance, then but one-half of the value of the property becomes a part of the gross estate. (5) Where acquired by the decedent and the other joint owner as joint tenants by gift, will, or inheritance, and their interests are not otherwise specified, or fixed by law, then one-half only of the value of the property is a part of the gross estate; or, where so acquired by the decedent and two or more persons, and the interests of the several joint tenants are not otherwise determinable, then the decedent and the other joint tenants surviving him shall each be deemed the owner of an equal fractional part, and the value of one only of such fractional parts is to be included in the gross estate.

The following are given as illustrative: (a) Where the decedent furnished the entire purchase price, the entire property should be included in the gross estate; (b) where the decedent furnished a part only of the purchase price, only a corresponding portion of the property should be so included; (c) where the decedent, prior to the acquisition of the property by himself and the other joint owner, gave the latter a sum of money which later constituted such

other joint owner's entire contribution to the purchase price of the property, the entire value of the property should be included; (d) where the other joint owner, prior to the acquirement of the property, received from the decedent, for less than an adequate and full consideration in money or money's worth, property which thereafter became, as such, or in a converted form, part of the purchase price of the property, the value of the property to be included is to be reduced proportionately to the consideration furnished by the other joint owner in the original transaction; (e) where the decedent furnished no part of the purchase price, no part of the property should be included; (f) where the decedent and spouse acquired the property by will as tenants by the entirety, one-half of the value of the property should be included.

GROSS ESTATE—PROPERTY PASSING UNDER POWER OF APPOINTMENT

Sec. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—* * *

(f) To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth; and * * *

(i) If any one of the transfers, trusts, interests, rights, or powers, enumerated and described in subdivisions (c), (d), and (f) of this section is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

ART. 24. General rules.—The value of all property passing under a general power of appointment must be included in the gross estate of the person exercising the power (known as the donee, or appointor) where the power is exercised by will. It should also be so included when the power is exercised by deed or other instrument executed in contemplation of, or intended to take effect in possession or enjoyment at or after, the death of the donee of the power. The statute, however, does not require inclusion within the gross estate of the value of the appointed property in the case of a bona fide sale thereof by the donee of the power for an adequate and full consideration in money or money's worth.

If the power is exercised for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there should be included in the gross estate only the excess of the fair market value, at the time of decedent's death, of the property passing under the power over the value of the consideration received by the decedent.

Only property passing under a *general* power should be included. Ordinarily a general power is one to appoint to any person or persons in the discretion of the donee of the power. Where the donee is required to appoint to a specified person or class of persons, the property should not be included in his gross estate. Where the decedent died prior to the effective date of the *Reveune Act of 1918*, the value of the appointed property is not to be so included: Duplicate copies of the instrument granting the power and of the instrument by which the power was exercised, one of each to be certified or verified, must be filed with Form 706 in all cases, unless the decedent was a nonresident, in which case only one copy of each instrument, certified or verified, is required.

GROSS ESTATE—INSURANCE

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated— * * *

(g) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over \$40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life. * * *

ART. 25. Taxable insurance.—The statute provides for the inclusion in the gross estate of insurance taken out by the decedent upon his own life, as follows: (a) All insurance receivable by, or for the benefit of, the estate; (b) all other insurance to the extent that it exceeds in the aggregate \$40,000.

The term "insurance" refers to life insurance of every description, including death benefits paid by fraternal beneficial societies, operating under the lodge system. Insurance is deemed to be taken out by the decedent in all cases where he pays all the premiums, either directly or indirectly, whether or not he makes the application. On the other hand, the insurance is not deemed to be taken out by the decedent, even though the application is made by him, where all the premiums are actually paid by the beneficiary. Where a portion of the premiums were paid by the beneficiary and the remaining portion by the decedent the insurance will be deemed

to have been taken out by the latter in the proportion that the premiums paid by him bear to the total of premiums paid.

ART. 26. Insurance in favor of the estate.—The provision requiring the inclusion in the gross estate of all insurance receivable by the executor, without any deduction, applies to policies made payable to the decedent's estate or his executor or administrator, and all insurance which is in fact receivable by, or for the benefit of, the estate. It includes insurance taken out to provide funds to meet the estate tax, and any other taxes or charges which are enforceable against the estate. The manner in which the policy is drawn is immaterial so long as there is an obligation, legally binding upon the beneficiary, to use the proceeds in payment of such taxes or charges. Where the decedent took out insurance in favor of another person or corporation as collateral security for a loan or other accommodation, and either directly or indirectly paid the premiums thereon, the insurance is deemed to be receivable for the benefit of the estate. The amount of the loan outstanding at decedent's death, with interest accrued thereon to that date, will be deductible in determining the net estate. (See Art. 29.)

ART. 27. Insurance receivable by other beneficiaries.—All insurance in excess of \$40,000 receivable by beneficiaries other than the estate must be included in the gross estate of any decedent dying after the effective date of the Revenue Act of 1918, except that where the decedent died subsequent to the effective date of the Revenue Act of 1918, but prior to the effective date of the Revenue Act of 1924, the proceeds of insurance policies taken out by him upon his own life payable to beneficiaries other than to or for the benefit of the decedent's estate, are not includable in the gross estate if the beneficiary receiving the proceeds became such prior to the effective date of the Revenue Act of 1918, and thereby acquired, prior to the effective date of the Revenue Act of 1918, a vested interest in the proceeds of the policy under the State law governing the rights or interest of the beneficiary.

Insurance payable to beneficiaries other than the estate, or for the benefit of the estate, need not be included in the gross estate of a decedent who died before the effective date of Title IV of the Revenue Act of 1918, but where, subsequent to September 8, 1916, such a decedent assigned a policy of insurance payable to or for the benefit of his estate, or caused it to be made payable to a specific beneficiary in contemplation of or intended to take effect in possession or enjoyment at or after his death, the entire proceeds should be included if such assignment or change in beneficiary did not amount to a bona fide sale for a fair consideration in money or money's worth. (See Articles 15 to 21, inclusive.)

The estate is entitled to only one exemption of \$40,000 upon insurance receivable by beneficiaries other than the estate. For example, if the decedent left life insurance payable to three such beneficiaries in amounts of \$10,000, \$40,000, and \$50,000 (total, \$100,000), the full amount should be listed on the return and therefrom subtracted the \$40,000 exemption as provided in Schedule C of Form 706. The word "beneficiaries," as used in reference to the \$40,000 exemption, means persons entitled to the actual enjoyment of the insurance money.

ART. 28. Valuation of insurance.—The amount to be returned where the policy is payable to or for the benefit of the estate is the amount receivable. Where the proceeds of a policy are payable to a beneficiary other than to or for the benefit of the estate, and all the premiums were paid by the decedent, the amount to be listed on Schedule C of the return is the full amount receivable, but where the proceeds are so payable and only a portion of the premiums were paid by the decedent, the amount to be listed on such schedule is that proportion of the insurance receivable which the premiums paid by the decedent bear to the total premiums paid. In cases where the proceeds of a policy are made payable to the beneficiary in the form of an annuity for life or for a term of years, the present worth of the annuity at the time of death should be included in the gross estate. For the method of computing the value of such an annuity, see Article 13, subdivision (10). Where the insurance contract gives the right to receive a fixed sum of money in lieu of an annuity, or other optional settlement, this fixed sum represents the value of the insurance for the purpose of the tax.

GROSS ESTATE—RETROACTIVE PROVISIONS

SEC. 302. * * * (h) Except as otherwise specifically provided therein subdivisions (b), (c), (d), (e), (f), and (g) of this section shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after the enactment of this Act.

DEDUCTIONS—ESTATES OF RESIDENTS ADMINISTRATION EXPENSES, CLAIMS, ETC.

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages upon, or any indebtedness in respect to, property (except, in the case of a resident decedent, where such property is not situated in the United States), to the extent that such claims, mortgages, or indebtedness were incurred or

contracted bona fide and for an adequate and full consideration in money or money's worth, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, or from theft, when such losses are not compensated for by insurance or otherwise, and such amounts reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or any estate, succession, legacy, or inheritance taxes; * * *

ART. 29. Deduction of claims, expenses, etc.—In order to be deductible under the foregoing provision of the statute, the item must fall within one of the several classes of deductions specifically enumerated therein, and must also, except in the case of deductible losses during the administration of the estate, be one the payment of which out of the estate is authorized by the laws of the jurisdiction under which the estate is being administered. Unless both of these conditions exist, the item is not deductible. Where the item is not one of those described, it is not deductible merely because payment is allowed by the local law. Where the amount which may be expended for the particular purpose is limited by the local law, no deduction in excess of such limitation is permissible. Where the amount sought as a deduction is a claim against the estate, or an unpaid mortgage, it is deductible to the extent only that liability therefor was incurred or contracted bona fide and for an adequate and full consideration in money or money's worth. An item may be entered on the return for deduction though the exact amount thereof is not then known, provided it is ascertainable with reasonable certainty, and will be paid. No deduction may be taken upon the basis of a vague or uncertain estimate. In the event an uncertain or contingent liability was undetermined at the time of final audit of the return by the Commissioner, and, as a consequence, deduction was not allowed therefor in such audit, and subsequently the liability and the amount thereof becomes fixed and determined, relief may be sought as provided by Articles 76 and 99.

ART. 30. Effect of court decree.—The decision of a local court as to the amount of a claim or administration expense will ordinarily be accepted where the court passes upon the facts upon which deductibility depends: Where the court does not pass upon such facts its decree will, of course, not be followed. For example, where the question before the court is whether a claim should be allowed, the decree allowing it will ordinarily be accepted as establishing the validity and amount of the claim. The decree will not necessarily be accepted even where it purports to decide the facts upon which deductibility depends. It must appear that the court actually

passed upon the merits of the case. This will be presumed in all cases where there is an active and genuine contest. Where the result reached appears to be unreasonable, this is some evidence that there was not such a contest, but it may be rebutted by proof to the contrary. Where the decree was rendered by consent, it will be accepted, provided the consent was a *bona fide* recognition of the validity of the claim—not a mere cloak for a gift—and was accepted by the court as satisfactory evidence upon the merits. It will be presumed that the consent was of this character, and was so accepted, where given by all parties having an interest adverse to the claimant. The decree will not be accepted where it is at variance with the law of the State; as, for example, an allowance made to an executor in excess of that prescribed by statute.

ART. 31. Funeral expenses.—An executor may deduct such amounts for funeral expenses as are actually expended by him and, under the laws of the local jurisdiction, are payable out of the decedent's estate. A reasonable expenditure by the executor for a tombstone, monument, mausoleum, or for a burial lot, either for the decedent or his family, may be deducted under this heading, provided such an expenditure is allowable by the local law. Included in funeral expenses is the cost of transportation of the person bringing the body to the place of burial.

ART. 32. Administration expenses.—The amounts deductible from the gross estate as "administration expenses" are such expenses as are actually and necessarily incurred in the administration of the estate; that is, in the collection of assets, payment of debts, and distribution among the persons entitled. The expenses contemplated in the law are such only as attend the settlement of an estate by the legal representative preliminary to the transfer of the property to individual beneficiaries or to a trustee, whether such trustee is the executor or some other person. Expenditures not essential to the proper settlement of the estate, but incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions. Administration expenses include (1) executor's commissions; (2) attorney's fees; (3) miscellaneous expenses. Each of these classes is considered separately in Articles 33 to 35, inclusive.

ART. 33. Executor's commissions.—The executor or administrator, in filing the return, may deduct his commissions in such an amount as has actually been paid or which at that time it is reasonably expected will be paid, but no deduction may be taken if no commissions are to be collected. Where the amount of the commissions has not been fixed by decree of the proper court, the deduction will be allowed on the final audit of the return provided: (1) That the Commissioner is reasonably satisfied that the commissions claimed

will be paid; (2) that the amount entered as a deduction is within the amount allowable by the laws of the jurisdiction wherein the estate is being administered; and (3) that it is in accordance with the usually accepted practice in said jurisdiction in estates of similar size and character. Where the commissions claimed have not been awarded by the proper court the Commissioner on final audit may disallow the deduction in part or in whole, as the circumstances in his judgment justify, subject to such future adjustment as the facts may later require. If the deduction is allowed in advance of payment and payment is thereafter waived, it shall be the duty of the executor to notify the Commissioner and pay the tax resulting therefrom, together with interest. Executors should note that the commissions received as compensation for their services constitute taxable income and that the amounts received or receivable by them as such compensation are cross-referenced for income-tax purposes.

A bequest or devise to the executor in lieu of commissions is not deductible. Where, however, the decedent fixed by his will the compensation payable to the executor for services to be rendered in the administration of the estate, deduction may be taken to the extent that the amount so fixed does not exceed the compensation allowable by the local law or practice.

Amounts paid as trustees' commissions do not constitute expenses of administration and are not deductible, whether received by the executor acting in the capacity of a trustee or by a separate trustee as such.

ART. 34. Attorney's fees.—The executor or administrator, in filing the return, may deduct such an amount as attorney's fees as have actually been paid or which at that time it is reasonably expected will be paid. If on the final audit of a return the fees claimed have not been awarded by the proper court and paid, the deduction will be allowed, provided the Commissioner is reasonably satisfied that the amount claimed will be paid and that it does not exceed a reasonable remuneration for the services rendered, taking into account the size and character of the estate and the local law and practice. Where the attorney's fees have not been paid at the time of the final audit of the return the Commissioner may disallow such part, or all, of the deduction as the circumstances may warrant, subject to such future adjustment as the facts may require.

Attorney's fees incident to litigation instituted by the beneficiaries as to their respective interests do not constitute a proper deduction, inasmuch as expenses of this character are properly charges against the beneficiaries personally and are not administration expenses as contemplated by the statute.

ART. 35. Miscellaneous administration expenses.—This includes such expenses as court costs, surrogates' fees, accountants' fees, appraisers'

fees, clerk hire, etc. Expenses necessarily incurred in preserving and distributing the estate are deductible, including the cost of storing or maintaining property of the estate, where it is impossible to effect immediate distribution to the beneficiaries. Expenses for preserving and caring for the property may not include additions or improvements; nor will such expenses be allowed for a longer period than the executor is required to retain the property. A brokerage fee for selling property of the estate is deductible where the sale is necessary in order to pay the decedent's debts, the expenses of administration, or to effect distribution. Other expenses attending the sale are deductible, such as the fees of an auctioneer, where it is reasonably necessary to employ one.

ART. 36. Claims against the estate.—The amounts that may be deducted under this heading are such only as represent personal obligations of the decedent existing at the time of his death, whether then matured or not, but only to the extent that the liability therefor was incurred or contracted bona fide and for an adequate and full consideration in money or money's worth. Only claims enforceable against the estate may be deducted.

ART. 37. Taxes.—The deduction of property taxes upon realty and personalty is governed by the following provisions:

(1) Where such taxes became a personal obligation of the decedent in his lifetime, the entire amount thereof is deductible. (See Art. 29.)

(2) Where assessed during the administration of the estate, and the taxes are a proper administration expense, deduction of the entire amount may be taken. (See Arts. 32 and 35.)

Federal taxes upon income received during the decedent's lifetime are deductible, but taxes upon income received after death are not deductible. No estate, succession, legacy, or inheritance tax is deductible.

ART. 38. Unpaid mortgages.—The full amount of unpaid mortgages upon, or any indebtedness in respect to, property included in the gross estate may be deducted, including interest which had accrued at the time of death, whether payable at that time or not, but only to the extent that the liability for such mortgages or indebtedness was incurred or contracted bona fide and for an adequate and full consideration in money or money's worth. The full value of the real estate, without any deduction for mortgages, must be returned as part of the gross estate. Real property situated outside the United States is not a part of the gross estate of a resident decedent. Hence no deduction may be taken of any mortgage upon, or any indebtedness in respect to, such property when owned by a resident decedent.

ART. 39. Losses from casualty or theft.—There may be deducted under this heading losses incurred during the settlement of the estate arising from fires, storms, shipwrecks, or other casualty, or from theft, when such losses are not compensated for by insurance or otherwise. If the loss is partly compensated, the excess of the loss over such compensation may be deducted. Losses not of the nature described are not deductible. In order to be deductible a loss must occur during the settlement of the estate. Where a loss with respect to an asset occurs after distribution thereof to the distributee it may not be deducted.

ART. 40. Support of dependents.—The support during the settlement of the estate of dependents of the decedent is deductible, but pursuant to the following rules:

(1) In order to be deductible, the allowance must be authorized by the laws of the jurisdiction in which the estate is being administered, and not in excess of what is reasonably required.

(2) The allowance for which deduction may be made is limited to support during the settlement of the estate. Any allowance for a more extended period is not deductible.

(3) There must be an actual disbursement from the estate to the dependents, but after payment has been made the right of deduction is not affected by the fact that the dependents do not expend the entire amount for their support during the settlement of the estate.

DEDUCTIONS—PROPERTY PREVIOUSLY TAXED

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate— * * *

(2) An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from such donor by gift or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under the Revenue Act of 1924, or an estate tax imposed under this or any prior Act of Congress was paid by or on behalf of the donor or the estate of such prior decedent as the case may be, and only in the amount of the value placed by the Commissioner on such property in determining the value of the gift or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate and not deducted under paragraph (1) or (3) of this subdivision; * * *

ART. 41. Deduction of the value of transfers previously taxed.—Where there is included in the decedent's gross estate the value of prop-

erty received by him by gift from any person within five years prior to his death, or received by gift, bequest, devise, or inheritance from any person who died within five years prior to his death, or the value of property acquired in exchange for property so received, the statute authorizes a deduction in behalf thereof, subject to the following conditions and limitations, namely:

(1) The property respecting which the deduction is sought must have been received by the decedent as a gift within five years of the date of his death, or received by him by gift, bequest, devise, or inheritance from a prior decedent who died within five years of the date of the decedent's death.

(2) The property must be identified either as the same which the decedent so received or acquired in exchange therefor.

(3) The property must have formed a part of the gross estate, situated in the United States, of such prior decedent, or have been included in the total amount of gifts of a donor.

(4) An estate tax by or on behalf of the estate of such prior decedent, or a gift tax by or on behalf of the donor, must have actually been paid (the mere filing of a return for such estate or donor not being sufficient).

(5) The property, or that acquired in exchange therefor, in so far as it constitutes a part of the decedent's gross estate, is, for the purpose of inclusion therein, to be valued as of the date of the decedent's death.

(6) The deduction, however, is limited to the value which the Commissioner placed on the property in determining the value of the gross estate of the prior decedent or the total amount of gifts of the donor.

(7) The deduction is also limited to the extent that the value of the property, or that acquired in exchange therefor, is included in the decedent's gross estate. (See examples following the next paragraph.)

(8) The deduction is further limited to the extent that the value of the property, or of that so acquired in exchange, is not deducted under paragraphs (1) or (3) of the subdivision (a) of section 303.

Example: The decedent's father died January 1, 1922. Included in his gross estate was a tract of land comprising 200 acres upon which the Commissioner placed a value for estate tax purposes of \$20,000. The tax on the father's estate was paid. The son, having inherited the tract from his father, sold 100 acres thereof on January 1, 1923, for \$20,000, and commingled the proceeds with his other funds. On the son's death, which occurred January 1, 1924, the remaining one-half of the land was returned as a part of his gross estate at \$20,000, which was the fair market value thereof as of the date of his death. Since only one-half of the tract was included in

the son's gross estate, the deduction is limited to one-half of the value placed by the Commissioner upon the whole tract when determining the value of the father's gross estate, or \$10,000.

Example: On January 2, 1924, A transferred by gift to B bonds of the then value of \$100,000. In due course a gift-tax return was filed by A and the tax paid on that basis. On August 1, 1924, B died, on which date the bonds were worth \$80,000. In filing the return for the estate of B, the bonds were listed at a value of \$80,000. Since the value of the bonds, as of the date of death of B, was \$80,000, the deduction is limited to that amount.

Under the provisions of the Revenue Act of 1918 the deduction was available only where the prior decedent died after October 3, 1917, the date of the passage of the Revenue Act of 1917, and the decedent's death occurred subsequent to the effective date of the Revenue Act of 1918. But under the provisions of the Revenue Act of 1921 the right to such deduction is made available to the estates of all decedents dying since September 8, 1916. Where, under the provisions of the Revenue Act of 1918, or any prior Act of Congress imposing an estate tax, the deduction was not available, the right thereto is to be determined in accordance with the provisions of paragraph (2) of subdivision (a) of section 403 of the Revenue Act of 1921, but where available under the Revenue Act of 1918, it is governed by paragraph (2) of subdivision (a) of section 403 of that Act. Section 1100 (c) of the Revenue Act of 1924 provides that the retroactive benefit of section 403 of the Revenue Act of 1921 is not lost by the repeal thereof. Where the tax has been paid without taking the deduction, a claim for refund may be made, as provided by Article 99.

The burden of proving that the estate is entitled to the deduction rests upon the executor, and in doing so it will be incumbent upon him to show that no part of the amount so claimed is also claimed as a deduction under either paragraphs (1) or (3) of subdivision (a) of section 303.

ART. 42. Property originally received.—If the property originally received from a donor or prior decedent is included in the decedent's gross estate, the executor must describe it fully, and prove its identity.

ART. 43. Property acquired in exchange.—The deduction for substituted property is limited to property acquired in exchange for the identical property received from the donor, or a prior decedent. It is limited to one exchange, and consequently when the property originally received is sold the right to the deduction is limited to the proceeds of the sale. If, however, the proceeds are reinvested, more than one exchange has been effected, and the right to the deduction is lost.

In the case of an exchange the executor must describe and identify fully both the property originally received from the donor or the prior decedent and the property acquired in exchange therefor. He must also state the date of the transaction by which the exchange was effected and the name and address of the transferee. If the exchange was made by written instrument of public record, a precise reference must be made to the record containing a transcript of the instrument, and, if by instrument not of record, a verified copy of the instrument itself must be supplied. If there was no written instrument, an affidavit as to the facts of the exchange by one or more persons having personal knowledge of the matter must be furnished.

DEDUCTIONS—TRANSFERS FOR PUBLIC, CHARITABLE, RELIGIOUS, ETC., USES

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate— * * *

(3) The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate; and * * *

ART. 44. Transfers for public, charitable, religious, etc., uses.—Deduction may be taken of the value of all property transferred by will or by the decedent in his lifetime not to exceed the value of the transferred property required to be included in the gross estate where in either case the property was transferred (1) to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes; or (2) to or for the use of any corporation or association organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals), where no part of the net earnings of the corporation or association inures to the benefit of any private stockholder or individual; or (3) to a trustee or

trustees, or a fraternal society, order, or association operating under the lodge system, where such transfers, legacies, bequests, or devises are to be used by such trustee, trustees, fraternal society, order, or association exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

Where a trust is created for both a charitable and a private purpose, deduction may be taken of the value of the beneficial interest in favor of the former only in so far as such interest is presently ascertainable, and hence severable from the interest in favor of the private use. Thus, when money or property is placed in trust to pay the income to an individual during his life, and then to pay or deliver the principal to a charitable corporation, or to apply it to a charitable purpose, the present value of the principal is deductible. For the manner of determining such value, see Article 13, subdivision (10).

The deduction is not limited, in the estates of resident decedents, to transfers to domestic corporations or associations, or to trustees for use within the United States.

ART. 45. Religious, charitable, scientific, and educational corporations.—A corporation or association to which such a transfer was made must meet three tests: (1) It must be organized and operated for one or more of the specified purposes; (2) it must be organized and operated *exclusively* for such purpose or purposes; and (3) no part of its net earnings shall inure to the benefit of private stockholders or individuals.

The estate is not deprived of the right to deduct the value of property so transferred by reason of the fact that private individuals are the recipients of the benefits which the corporation or association dispenses. Such right is, however, lost wherever any part of the net earnings of the corporation or association inures to the benefit of a private stockholder or individual. Thus, if the shareholders or members of the corporation or association are entitled, upon a dissolution thereof, to receive the proceeds of its property, including accumulated net earnings, no right of deduction exists, even though the by-laws provide that the shareholders or members shall not receive dividends or other return upon their shares or interests.

ART. 46. Proof required.—In establishing the right of the estate to this deduction, the executor must submit:

(1) Duplicate copies of the will of the decedent, and of the order admitting the will to probate, one copy of each of which should be certified. Duplicate copies of any instrument in writing by which the decedent made a transfer of property in his lifetime the

value of which is required by the statute to be included in his gross estate, and if the instrument is of record one copy thereof should be certified, and if not of record, one copy should be verified. The certified or verified copy should be forwarded by the Collector to the Commissioner.

(2) An affidavit by the executor stating whether any action has been instituted to contest the will, or any bequest, or devise therein, the deduction of which from the gross estate is claimed, and whether, according to his information and belief, any such action is designed or contemplated.

(3) Such other documents or evidence as may be requested by the Commissioner.

ART. 47. Conditional bequests.—Where the transfer is dependent upon the performance of some act or the happening of some event in order to become effective, it is necessary that the performance of the act or the occurrence of the event shall have taken place before the deduction can be allowed.

Where the legatee, devisee, donee, or trustee is empowered to divert the property or fund, in whole or in part, to a use or purpose which would have rendered it, to the extent that it is subject to such power, not deductible had it been directly so bequeathed, devised, or given by the decedent, deduction will be limited to that portion, if any, of the property or fund which is exempt from an exercise of such power.

SPECIFIC EXEMPTION

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate— * * *

(4) An exemption of \$100,000. * * *

ART. 48. Specific exemption.—There may be deducted from the gross estate of all resident decedents who died subsequent to 10:25 a. m., Washington, D. C., time, February 26, 1926, a specific exemption of \$100,000. Where a resident decedent died prior to 10:25 a. m., February 26, 1926, the specific exemption which may be deducted is only \$50,000. If more than one return is made for purposes of the tax, the exemption may be taken but once. No such exemption is allowed in the estate of nonresident decedents.

ESTATES OF NONRESIDENTS

SEC. 303. * * * (d) For the purpose of this title, stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States, and any property of which the decedent has made a transfer, by trust or otherwise, within the meaning of subdivision (c) or (d) of section 302, shall be deemed to be situated in the United States, if so situated either at the time of the transfer, or at the time of the decedent's death.

(e) The amount receivable as insurance upon the life of a non-resident decedent, and any moneys deposited with any person carrying on the banking business, by or for a nonresident decedent who was not engaged in business in the United States at the time of his death, shall not, for the purpose of this title, be deemed property within the United States.

(f) Missionaries duly commissioned and serving under boards of foreign missions of the various religious denominations in the United States, dying while in the foreign missionary service of such boards, shall not, by reason merely of their intention to permanently remain in such foreign service, be deemed nonresidents of the United States, but shall be presumed to be residents of the State, the District of Columbia, or the Territories of Alaska or Hawaii wherein they respectively resided at the time of their commission and their departure for such foreign service.

ART. 49. Domicile.—For meaning of the terms “residents” and “nonresidents,” and the presumption applying as to the residence of missionaries, see Article 5.

ART. 50. Situs of property of nonresident decedents.—Real estate within the United States, certificates of stock, bonds, bills, notes, and mortgages, physically in the United States at date of death, moneys due on open accounts by domestic debtors, and stock of a corporation or association created or organized in the United States, constitute property having a situs in the United States. As to the meaning of the term “United States,” see Article 5. On the other hand, insurance upon the life of a nonresident, and moneys deposited by or for a nonresident not engaged in business in the United States at the time of his death with any person (for meaning of the term “person,” see section 2 (a) (1) of the statute) carrying on the banking business in the United States, are not to be regarded as property situated therein.

Property of which the decedent has made a transfer (1) in contemplation of or intended to take effect in possession or enjoyment at or after death, or (2) the enjoyment of which was subject, at the date of his death, to any change through a power, exercisable either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where such power was relinquished in contemplation of death, is deemed to be situated in the United States if so situated either at the time of the transfer, or at the time of the decedent's death. (See Arts. 15 to 20, inclusive.)

DEDUCTIONS—ESTATES OF NONRESIDENTS

SEC. 303. For the purpose of the tax the value of the net estate shall be determined— * * *

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—

(1) That proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated, but in no case shall the amount so deducted exceed 10 per centum of the value of that part of his gross estate which at the time of his death is situated in the United States;

(2) An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from such donor by gift or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under the Revenue Act of 1924, or an estate tax imposed under this or any prior Act of Congress was paid by or on behalf of the donor or the estate of such prior decedent as the case may be, and only in the amount of the value placed by the Commissioner on such property in determining the value of the gift or the gross estate of such prior decedent, and only to the extent that the value of such property is included in that part of the decedent's gross estate which at the time of his death is situated in the United States and not deducted under paragraph (1) or (3) of this subdivision; and

(3) The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used within the United States by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

(c) No deduction shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section 304 the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States. * * *

ART. 51. Net estate.—The gross estate of a resident and of a nonresident are made up in the same way. In ascertaining the net estate, however, the transfer of which is subject to tax, there is a radical difference between the two cases. The net estate in the case of a resident is determined by making specified deductions from the entire gross estate, whereas the net estate in the case of a non-

resident is determined by making the deductions from the value of so much of the gross estate as is situated in the United States. Thus, in substance, the statute imposes the tax only upon the transfer of so much of the estate of a nonresident as, under the terms of the statute, had its situs in the United States. The estates of nonresidents are not entitled to the specific exemption of \$50,000 or \$100,000. (See Arts. 48 and 55.)

ART. 52. Deduction of claims, expenses, etc.—In estates of nonresidents, deduction from the gross estate may be taken, subject to the limitations herein subsequently to be referred to, for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, or from theft, when such losses are not compensated for by insurance or otherwise, amounts reasonably required and actually expended for the support during settlement of the estate of those dependent upon the decedent, as are allowed by the laws of the jurisdiction under which the estate is being administered. Treatment of the several deductions enumerated above will be found in Articles 29 to 40, inclusive. No deduction may be taken of any income taxes upon income received after the death of the decedent, or of any estate, succession, legacy, or inheritance taxes. It is immaterial whether the amounts to be deducted were incurred or expended within or without the United States, but certain limitations are imposed which do not apply to estates of resident decedents, namely: (1) Only that proportion of the aggregate thereof is deductible which the value of that part of the gross estate situated (within the meaning of the statute) in the United States, bears to the value of the entire gross estate, wherever situated; and in no event may a sum be deducted in excess of 10 per centum of the value of that part of the gross estate situated in the United States. (See Art. 55.) Such 10 per centum limitation does not apply to the deductions subsequently considered in Articles 53 and 54. (2) No deduction whatever may be taken unless the executor includes in the return the value at the date of the nonresident's death of that part of the gross estate not situated in the United States.

In order that the Commissioner may properly pass upon the items claimed as deductions, the executor should submit a certified copy of the schedule of liabilities, claims against the estate, and expenses of administration filed under the foreign death-duty act; or, if no such schedule was filed, a certified copy of the schedule of such liabilities, claims, and expenses filed with the foreign court in which administration was had; or, if items of deduction allowable under section 303 (b) (1) were not included in either such schedule, or if no such schedules were filed, then the affidavit of the foreign executor setting

forth the facts relied upon as entitling the estate to the benefit of the particular deduction or deductions.

ART. 53. Deduction of value of transfers previously taxed.—The right to deduct the value of property received by a nonresident decedent by gift from any person within five years prior to his death, or by gift, bequest, devise, or inheritance from any person who died within five years prior to his death, or of the value of property acquired in exchange for property so received, is governed by the same rules as those applying to estates of resident decedents (Articles 41 to 43, inclusive), subject to the two following exceptions: (1) That such right is limited to the extent that the value of the property, or that acquired in exchange therefor, is not deducted under paragraphs (1) or (3) of subdivision (b) of section 303; (2) That such right is not available to any extent unless the executor includes in the return the value at the time of the decedent's death of that part of the gross estate not situated in the United States. (See Art. 52.)

ART. 54. Deduction of value of transfers for public, charitable, religious, etc., uses.—The right to deduct the value of property transferred by nonresidents for public, religious, charitable, scientific, literary, or educational purposes is governed by the same rules as those applying to estates of resident decedents (Arts. 44 to 47, inclusive), subject, however, to the two following exceptions, namely: (1) That the right is limited to transfers to corporations and associations created or organized in the United States, or to trustees for use within the United States, and, (2) is then available only where the executor includes in the return the value at the time of the nonresident decedent's death of that part of the gross estate not situated in the United States.

Instead of duplicate copies of the documents specified in Article 46, only one copy is required to be filed.

ART. 55. Determination of net estate.—The following example will show the manner of determining the net estate of a nonresident decedent. The gross estate, wherever situated, amounts to \$1,000,000, of which \$200,000 represents the value of the property having its situs within the United States (the term "United States" including not only the several States, but also the Territories of Alaska and Hawaii, and the District of Columbia). The funeral expenses, administration expenses, and claims against the estate aggregate \$75,000, and there are charitable bequests, for use within the United States, amounting to \$25,000. Hence the property situated within the United States constitutes 20 per cent of the entire gross estate wherever situated, and a like percentage of the \$75,000 is \$15,000.

As the last named amount does not exceed 10 per cent of the value of the property situated in the United States, the whole thereof is deductible. The following result is accordingly obtained:

Gross estate within the United States-----	\$200,000
20 per cent of \$75,000-----	\$15,000
Charitable bequests for use within the United States-----	25,000
	<hr/> 40,000
Net estate-----	\$160,000

For the manner of computing the tax on the net estate, see Article 8.

In the example given, had the funeral expenses, administration expenses and claims against the estate aggregated \$150,000, 20 per cent thereof, or \$30,000, would not have been deductible for the reason that it would have exceeded 10 per cent of the value of the property situated in the United States; such 10 per cent being the maximum permitted by the statute. The deduction would accordingly have been limited to 10 per cent of \$200,000, plus the charitable bequests, or a total of \$45,000, and the resultant net estate would have been \$155,000, instead of the amount given in the example.

ART. 56. *Payment of tax.*—The provisions relating to credits (see Art. 9) and to rates and payment of the tax are the same in estates of nonresidents and of residents. The statute provides that the executor shall pay the tax. If there is no executor or administrator appointed, qualified, and acting within the United States, every person in either the actual or constructive possession of any property of the decedent is constituted by the statute an executor for the purpose of tax payment, and is liable for the tax to the extent of the property so in his possession. (See Arts. 78 to 85, inclusive.) All checks, drafts, or money orders should be made payable to the order of Collector of Internal Revenue.

PRELIMINARY NOTICE—ESTATES OF RESIDENTS

SEC. 304. (a) The executor, within two months after the decedent's death, or within a like period after qualifying as such, shall give written notice thereof to the collector. * * *

ART. 57. *When notice required.*—A preliminary notice is required to be filed in the case of every resident decedent whose gross estate exceeded \$100,000 in value at the date of death, if the decedent died subsequent to the effective date of the Revenue Act of 1926. If death occurred prior to the effective date of the Revenue Act of 1926, notice is required if the gross estate exceeded \$50,000 in value at the date of death. The notice must be filed within two months after the

decedent's death or within two months after the executor has qualified and must be filed in duplicate with the collector in whose district the decedent had his domicile at the time of death. Where there is doubt as to whether the gross estate exceeded \$100,000, or exceeded \$50,000, as the case may be, the notice should be filed as a matter of precaution in order to avoid the possibility of penalties attaching.

ART. 58. Notice by executor or administrator.—The duly qualified executor or administrator is required to file such preliminary notice on Form 704, copies of which may be obtained from the collector, within two months after qualifying as such, if notice has not already been filed. The primary purpose of the notice is to advise the Government of the existence of taxable estates, and filing should not be delayed beyond the two-months period because of uncertainty as to the exact value of the assets. Since the filing of the notice within the prescribed period is mandatory, the estimate of the gross estate called for by the notice is merely the best approximation of value which can be made within the time allowed. The instructions upon the back of the form should be read carefully before executing the notice. The signature of one executor or administrator upon Form 704 is sufficient. For penalties for delinquency in filing notice, or for filing a false or fraudulent notice, see Articles 91, 92, and 94.

ART. 59. Notice by others than duly qualified executor or administrator.—The term "executor" embraces any person in actual or constructive possession of any property of the decedent at the time of the latter's death, where within two months after the decedent's death no executor or administrator qualifies. The notice on Form 704 must be filed by such persons in every case where an executor or administrator has not duly qualified within such period. Where, within the period mentioned, an executor or administrator qualifies, the duty of filing the notice devolves upon him, and all other persons are relieved therefrom.

PRELIMINARY NOTICE—ESTATES OF NONRESIDENTS

ART. 60. Estates of nonresidents; preliminary notice.—In estates of nonresidents, notice on Form 705, copies of which may be obtained from the Commissioner of Internal Revenue, Washington, D. C., or from any United States Collector of Internal Revenue, upon application, is required in the case of every nonresident decedent any part of whose gross estate was situated (within the meaning of the statute, as to which see Art. 50), in the United States. The notice must be filed, in duplicate, by every appointed, qualified, and acting executor or administrator within the United States with the United States Collector of Internal Revenue of the district in which such

part of the gross estate was situated, or, if parts of the gross estate were situated in more than one district, or if the gross estate consists wholly of stock in a domestic corporation, then with the collector for the Second District of New York, Customhouse, New York, N. Y., or with such collector as the Commissioner may designate. The notice is necessary if any part of the decedent's gross estate was situated, within the meaning of the statute, in the United States, regardless of the value of that part or of the entire gross estate. If no executor or administrator has qualified, notice must be filed within two months after the date of death by every person in either the actual or constructive possession of any property of the decedent so within the United States at the time of his death. If such person has no knowledge of the decedent's death within two months following its occurrence, he should file the notice immediately upon obtaining such knowledge. The term "person in actual or constructive possession of any property of the decedent" (Section 300) includes, among others, the decedent's agents and representatives; safe-deposit companies, warehouse companies, and similar custodians of property in this country of a nonresident decedent; brokers holding, as collateral, securities belonging to the decedent or investment funds owned by the decedent, and debtors of the decedent in this country. As to any moneys deposited by or for a nonresident decedent with any person, corporation, or association carrying on the banking business, no notice is required, unless, however, the decedent was engaged in business in the United States at the time of his death.

ART. 61. Transfer agents' notice.—A notice on Form 714 is required to be filed whenever a corporation, its transfer agent, registrar, or paying agent, is called upon to make a transfer of stock or bonds, or to pay dividends or interest, to any successor in interest of a nonresident stockholder or bondholder who died after September 8, 1916, unless the transfer is made upon the order of an executor or administrator appointed, qualified, and acting within the United States. The notice is required for dividends declared, and for interest which had accrued on bonds prior to the death of the decedent, although payable thereafter. Notice should be filed with the Commissioner of Internal Revenue at Washington, D. C., within two months following the date of death, or immediately upon receipt of the request for transfer or payment. A transfer agent should be vigilant to report all cases in which the fact of the death of a nonresident appears. Where the securities are received without the personal assignment of the decedent, but with the transfer order of the foreign executor, it is clear that the case should be reported. Where the securities bear the personal assignment of the decedent, the transfer should be reported if made

upon the order of a foreign executor; or if information is received in any other manner that the record owner has died a nonresident of the United States.

In order to prevent loss of the tax upon nonresident estates, it is essential that transfer agents exercise great care in reporting all transfers of the kind described. Their records will be examined from time to time by internal-revenue officers to determine whether this regulation is being strictly complied with. Failure to file notice in the manner prescribed will render the transfer agent liable to a fine.

ART. 62. **Transfer of stocks and bonds of nonresident decedents.**—Wherever a transfer agent is required to file the notice as provided in Article 61, he shall not make transfer of any stocks or bonds standing in the name of a nonresident decedent until there has been delivered to such collector of internal revenue as may be designated by the Commissioner the bond of the party to whom the stocks or bonds are to be transferred with surety in an amount to be fixed by the Commissioner, not exceeding in amount the value of the stocks or bonds to be transferred, conditioned for the payment of the tax in an amount not in excess of the amount for which the bond is given. Upon receipt of such notice the Commissioner will at once, upon request, fix the amount for which the bond is to be given. In lieu of such bond a deposit, either of money or of bonds of the United States, of the amount so fixed may be made with such collector of internal revenue as the Commissioner may designate.

Where bonds of the United States or moneys are deposited in lieu of the delivery of such bond, return will be made thereof to the depositor after payment in full of the tax. If, however, the tax be not paid in full on or before the due date thereof, or within such period as payment may have been extended by the Commissioner, the collateral will be subjected to payment of the tax, or the then unpaid balance thereof, and the excess of the deposit, or of the proceeds thereof remaining, if any, will be returned to the depositor. In lieu of the provisions and restrictions hereinbefore set forth, transfer agents are authorized to make transfer of stocks and bonds standing in the name of a nonresident decedent to the duly qualified ancillary executor or administrator within the United States without such transfer agent giving notice thereof in writing to the Commissioner of Internal Revenue.

THE RETURN—ESTATES OF RESIDENTS

SEC. 304. (a) * * * The executor shall also, at such times and in such manner as may be required by regulations made pursuant to law, file with the collector a return under oath in duplicate, setting forth (1) the value of the gross estate of the decedent at the time

of his death; or, in case of a nonresident, of that part of his gross estate situated in the United States; (2) the deductions allowed under section 303; (3) the value of the net estate of the decedent as defined in section 303; and (4) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

(b) Return shall be made in all cases where the gross estate at the death of the decedent exceeds \$100,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate.

SEC. 306. As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax.

ART. 63. When return required—Date of filing.—A return on Form 706 is required in the case of every resident decedent whose gross estate, as defined in the statute, exceeded \$100,000 in value at the date of his death. If the decedent died prior to 10:25 a. m., Washington, D. C., time, February 26, 1926, the return should be filed in case the gross estate exceeded \$50,000 in value at date of death. This return must be filed with the collector for the district in which the decedent was domiciled at the time of his death. It must be filed in duplicate within one year after the date of death, or, in any particular instance, at such time prior to the expiration of such year as the Commissioner may designate. When the due date for filing the return falls on a Sunday or on a legal holiday, the due date for filing will be the day following such Sunday or legal holiday. If placed in the mails the return should be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the date on which the return is required to be filed. If a return is made and placed in the mails in due course, properly addressed, and postage paid, in ample time to reach the office of the collector on or before the due date, no penalty will attach should the return not be actually received by such officer until subsequent to that date.

ART. 64. Persons liable for return.—The statute provides that the duly qualified executor or administrator shall file the return. If there is more than one executor or administrator, the return must be made jointly by all. Where no executor or administrator has been appointed, every person in actual or constructive possession of any property of the decedent is constituted by the statute an executor for the purposes of the tax (section 300), and is required to make

and file a return as provided by section 304. Where, in any case, the executor is unable to make a complete return as to any part of the gross estate, he is required to give all the information he has as to such property, including a full description, and the name of every person holding a legal or beneficial interest in the property. Where the executor is unable to make a return as to any property, the statute requires that every person holding a legal or beneficial interest therein shall, upon notice from the collector, make return as to such part of the gross estate. For penalties for delinquency in filing return, or for filing a false or fraudulent return, see Articles 91, 92, and 94.

ART. 65. Preparation of return.—The return must be made on Form 706, copies of which will be supplied by the collector upon application. It must be filed in duplicate, under oath, and contain an itemized inventory, by schedule, of the property constituting the gross estate. The deductions must also be listed on the appropriate schedules. The instructions printed on the form should be carefully followed. All documents and vouchers used in preparing the return should be retained by the executor so as to be available for inspection whenever required. Duplicate copies of the will, if the decedent died testate, one of which should be certified, must be submitted with the return, together with copies of such other documents as in Form 706 and in the applicable articles of these regulations are required. There may also be filed in duplicate copies of any documents which the executor may desire to submit with the return in explanation thereof.

ART. 66. Supplemental data.—The statute provides that the executor, in addition to filing notice and return, shall furnish such supplemental data as may be necessary to establish the correct tax (sec. 304). It is therefore the duty of the executor to furnish upon request copies of any documents in his possession relating to the estate, or on file in any court having jurisdiction over the estate, appraisal lists of any items included in the gross estate, copies of balance sheets or other financial statements relating to the value of stock, and any other information obtainable by him that may be found necessary in the determination of the tax. Failure to comply with such a request will render the executor liable to penalties (Art. 93), and proceedings may be instituted in the proper United States court to secure compliance therewith (sec. 1122 (a)).

Persons having possession or control of any records or documents containing or supposed to contain any information concerning the estate, or having knowledge or information of any fact or facts of a material bearing upon the liability, or the extent of liability, of the estate to the tax, shall, upon request of the Commissioner or any

revenue agent or inspector designated by him for that purpose, make disclosure thereof. Failure on the part of any person to comply with such request will render him liable to penalties (Art. 93), and compliance with the request may be enforced in the proper United States court (sec. 1122 (a)).

ART. 67. Investigation of returns.—An investigation of every return for estate tax will be conducted to verify its accuracy. The investigation will be made by special officers of the Bureau. The fact that an investigation is made does not reflect upon the competence or good faith of the executor, since investigations are required in all cases. The executor should cooperate with the examining officer in order that the tax liability may be correctly determined and the case closed. During the course of the investigation the examining officer will inspect the tangible property of the decedent and the books and records of the estate, interview the executor and other persons having knowledge of the decedent's affairs, verify the value of the assets and the amounts of the deductions, and take such other steps as may be necessary in order that the correct amount of tax may be determined.

Wherever it is practicable to do so, the Bureau will, in its discretion, or upon the executor's request to the Commissioner, make its field investigation simultaneously and in cooperation with the officials having in charge the matter of determining the amount of tax due the State or Territory by virtue of the decedent's death. Such investigation will extend to all questions in so far as they have bearing both upon the tax liability of the estate under the Federal estate tax law and the taxing act of the particular State or Territory, and comprehend the disclosure to the agents of the State or Territory of information contained in the return as well as that obtained upon investigation, provided a like cooperation is given by the agency of the State or Territory. Such disclosure may be made by the field investigating officer or his superiors, either during the investigation or subsequent thereto. The investigations made in cooperation with the State or Territory are, like all others, limited to an ascertainment of information to aid the Commissioner, who alone under the law is empowered to determine the tax, in arriving at a conclusion as to the Federal estate tax liability of the estate.

The Bureau often has access to information having a material bearing upon the value of property not available to its field agents, and hence it not infrequently happens that the value of an asset as determined by the Commissioner is more or less than that which would result from a determination based only upon information gathered by the field investigating officer of the Bureau. It is manifest, therefore, that whatever value is placed upon an asset by the

State or Territory officials, or recommended to the Bureau by its field agent, can not be accepted, unless such value is confirmed by the Commissioner.

Upon completion of every investigation the executor will, except as otherwise provided in Article 76, be apprised by the investigating officer of his findings, and will be given an opportunity to protest against the findings and an oral hearing before the supervising internal revenue agent or the internal revenue agent in charge will be granted in connection with the protest. The provisions relating to protests and hearings are set forth in detail in Article 76. Upon the completion of a review and audit by the Commissioner, the executor will be informed by letter of the result thereof. If the letter contains notification of an amount of unpaid tax, such unpaid amount may be remitted to the collector.

It is the purpose of the Commissioner to make all investigations as soon as practicable after the filing of the return and to determine the tax with the least possible delay. Where the executor makes written application to the Commissioner for a determination of the tax and discharge from personal liability therefor the Commissioner will within one year after receipt of such application, or if application is made before the return is filed, then within one year after the return is filed, notify the executor of the amount of the tax, and, upon payment thereof, the executor will be discharged from personal liability for any deficiency in the tax thereafter found to be due. (See Sec. 313 (b) and (c).)

EXTENSION OF TIME FOR FILING RETURN

Revised Statutes, Sec. 3176, as amended by Sec. 1103, Revenue Act, 1926: * * * If the failure to file a return (other than a return under Title II of the Revenue Act of 1924 or Title II of the Revenue Act of 1926) or a list is due to sickness or absence, the collector may allow such further time, not exceeding 30 days, for making and filing the return or list as he deems proper. * * *

ART. 68. Extension of time by collector.—In case of sickness or absence, collectors are authorized to grant an extension of time for filing the return for a period not in excess of 30 days from the due date, which extension may be granted either before or after the due date. An extension of time for filing the return does not in itself operate to extend the time for the payment of the tax, which is due and payable one year after the date of the decedent's death. For extension of time of payment, see Article 82.

ART. 69. Extension of time by Commissioner.—If it is impossible for the executor to file a reasonably complete return within one year from the date of death, the Commissioner may, upon application from the executor showing good and sufficient cause, grant an exten-

sion of time not to exceed six months from the due date. Before the expiration of the extension period granted a return as complete as possible must be filed, and the executor may thereafter file an amended return when the condition of the estate permits. An extension of time for filing the return does not operate to extend the time for the payment of the tax, which is due one year after the decedent's death. An extension of time in which to make payment of the tax may be secured as provided in Article 82.

THE RETURN—ESTATES OF NONRESIDENTS

ART. 70. Return of estates of nonresidents.—A return on Form 706, copies of which may be obtained from the Commissioner of Internal Revenue, Washington, D. C., or from any United States Collector of Internal Revenue, upon application, is required in the case of every nonresident decedent any part of whose gross estate was situated (within the meaning of the statute, as to which see Art. 50), in the United States. The return must be filed with the United States Collector of Internal Revenue of the district in which such part of the gross estate was situated, or, if parts of the gross estate were situated in more than one district or if the gross estate consists wholly of stock in a domestic corporation, then with the Collector for the second district of New York, Customhouse, New York, N. Y., or to such collector as the Commissioner may otherwise designate. The return must be filed in duplicate and under oath within one year after the decedent's death, or, in any particular instance, at such time prior to the expiration of such year as the Commissioner may designate, unless an extension is obtained pursuant to Article 68 or 69. When the due date for filing the return falls on a Sunday or on a legal holiday, the due date for filing will be the day following such Sunday or legal holiday. If placed in the mails the return should be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the date on which the return is required to be filed. If a return is made and placed in the mails in due course, properly addressed, and postage paid, in ample time to reach the office of the collector on or before the due date, no penalty will attach should the return not be actually received by such officer until subsequent to that date. The return should be made and filed by the executor or administrator appointed, qualified, and acting within the United States, or, if none, then by any person in actual or constructive possession of any property of the decedent situated (within the meaning of the statute) in the United States, whatever its value. If the qualified executor or administrator is unable to make a complete return as to any part of the gross estate, he is required to give

all the information available to him as to such part, including a description thereof and the name of every person holding a legal or beneficial interest therein. As to the meaning of the term "person in actual or constructive possession of any property of the decedent," see Article 60.

ART. 71. Supplemental data.—Pursuant to the provisions of section 304 (a), with respect to furnishing supplemental data, the executor of the will of a nonresident decedent is required to file with the return:

(1) A certified copy of will, if decedent died testate, or, if the decedent left several wills to govern in different jurisdictions, certified copy of each will.

(2) If any deductions are claimed, copy of inventory of property filed under the foreign death-duty act; or, if no such inventory was filed, a certified copy of inventory filed with the foreign court of probate jurisdiction.

The Commissioner may require the documents specified in paragraph number (2) regardless of whether deductions are claimed. For requirements dealing with the duty to furnish other documents or information relating to the tax liability of the estate, and penalties in connection therewith, see Article 66.

PRIVILEGED CHARACTER OF RETURNS

ART. 72. Returns confidential.—All estate tax returns and notices are treated as privileged communications and may not be exhibited other than to the executor or his duly authorized agent, except as stated in Articles 67 and 73. This requirement will be rigidly enforced, and extends to information of a private nature submitted or obtained in connection with a return or notice. The requirement does not operate to prevent internal revenue officers from disclosing the returned value of any item or the amount of any specific deduction, where such disclosure is necessary in order to arrive at a correct determination of the tax. This right of disclosure, however, does not extend to such information as the amount of the estate, the amount of tax, or other general data. Nor are the records in possession of the Bureau, whether on file with the Commissioner or the collector, open to inspection, except as provided in Articles 67 and 73.

ART. 73. Disclosure other than to executor.—Where any person other than the executor has a material interest in ascertaining any fact disclosed by the return, or in obtaining information as to the payment of the tax, or where an officer of a State or Territory requires information contained in a return or obtained upon investigation for his official use in connection with an estate, inheritance, legacy, or

succession tax of the State or Territory, he shall make a written application to the Commissioner of Internal Revenue for such information, setting forth the nature of his interest and the purpose of the application. The Commissioner will review the application, and, if it is approved, the collector will be directed to exhibit the return to the applicant, or give him such information as is specified, or the Commissioner may permit an inspection of the return on file in the Bureau, or furnish such information as he deems advisable.

Under no circumstances shall the collector give information to persons other than the executor except upon the written order of the Commissioner, and then only to the extent authorized by such order.

If an attorney or other person asks a ruling on a question of law arising in a specific case, the Commissioner will require satisfactory evidence of the right to obtain such ruling. Hypothetical questions, however, can not be answered.

ART. 74. Attorneys must have authorization.—In all cases where information is sought regarding an estate, or an interview is asked, by an attorney or by any agent of the executor or administrator, the information or interview will be denied unless the attorney or agent presents a duly executed power of attorney from the executor or administrator authorizing the attorney or agent to act in his behalf.

For regulations governing the recognition of attorneys, agents, and other persons representing claimants before the Treasury Department, reference should be made to Treasury Department Circular No. 230, dated August 15, 1923, as supplemented, copies of which may be obtained upon application to the Secretary of the Committee on Enrollment and Disbarment, Treasury Department, Washington, D. C.

RETURN BY COLLECTOR OR COMMISSIONER

Revised Statutes, Sec. 3176, as amended by Sec. 1103 Revenue Act of 1926: If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner of Internal Revenue may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be prima facie good and sufficient for all legal purposes. * * *

ART. 75. Where no return filed, or a false or fraudulent return filed.—Section 3176 of the Revised Statutes provides that if any person fails to make and file a return at the time required, or makes, willfully or otherwise, a false or fraudulent return, the collector or deputy collector shall make a return. The Commissioner may also make a return or amend any return made by a collector or deputy collector. A return so made by the Commissioner, or made by the collector or deputy collector and approved by the Commissioner, shall be prima facie good and sufficient for all legal purposes. Where a tax is found to be due upon such a return, both the estate and the executor will be liable for penalties as well as for the tax.

DEFICIENCY TAX

SEC. 307. As used in this title in respect of a tax imposed by this title the term "deficiency" means—

(1) The amount by which the tax imposed by this title exceeds the amount shown as the tax by the executor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the executor upon his return, or if no return is made by the executor, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax.

PROTESTS AND PETITIONS

SEC. 308. (a) If the Commissioner determines that there is a deficiency in respect of the tax imposed by this title, the Commissioner is authorized to send notice of such deficiency to the executor by registered mail. Within 60 days after such notice is mailed (not counting Sunday as the sixtieth day), the executor may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. Except as otherwise provided in subdivision (d) or (f) of this section or in section 312 or 1001, no assessment of a deficiency in respect of the tax imposed by this title and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the executor, nor until the expiration of such 60-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3224 of the Revised Statutes the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court. * * *

(e) The Board shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been

mailed to the executor, and to determine whether any additional amount or addition to the tax should be assessed, if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) If after the enactment of this Act the Commissioner has mailed to the executor notice of a deficiency as provided in subdivision (a), and the executor files a petition with the Board within the time prescribed in such subdivision, the Commissioner shall have no right to determine any additional deficiency, except in the case of fraud, and except as provided in subdivision (e) of this section or in subdivision (c) of section 312. If the executor is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered, for the purposes of this subdivision or of subdivision (a) of this section, or of section 319, as a notice of a deficiency, and the executor shall have no right to file a petition with the Board of Tax Appeals based on such notice, nor shall such assessment or collection be prohibited by the provisions of subdivision (a) of this section. * * *

* * * * *

Sec. 318. (a) If after the enactment of this Act the Commissioner determines that any assessment should be made in respect of any estate or gift tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or by any such Act as amended, the Commissioner is authorized to send by registered mail to the person liable for such tax notice of the amount proposed to be assessed, which notice shall, for the purposes of this Act, be considered a notice under subdivision (a) of section 308 of this Act. In the case of any such determination the amount which should be assessed (whether as deficiency or additional tax or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in case of delinquency in payment after notice and demand and the provisions prohibiting claims and suits for refund) as in the case of a deficiency in the tax imposed by this title, except that in the case of an estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, the period of limitation prescribed in section 1109 of this Act shall be applied in lieu of the period prescribed in subdivision (a) of section 310. * * *

(b) If before the enactment of this Act any person has appealed to the Board of Tax Appeals under subdivision (a) of section 308 of the Revenue Act of 1924 (if such appeal relates to a tax imposed by Title III of such Act or to so much of an estate tax imposed by any of the prior Acts enumerated in subdivision (a) of this section as was not assessed before June 3, 1924), and the appeal is pending before the Board at the time of the enactment of this Act, the Board shall have jurisdiction of the appeal. In all such cases the powers, duties, rights, and privileges of the Commissioner and of the person who has

brought the appeal, and the jurisdiction of the Board and of the courts, shall be determined, and the computation of the tax shall be made, in the same manner as provided in subdivision (a) of this section, except as provided in subdivision (h) of this section and except that the person liable for the tax shall not be subject to the provisions of subdivision (a) of section 319.

(c) If before the enactment of this Act the Commissioner has mailed to any person a notice under subdivision (a) of section 308 of the Revenue Act of 1924 (whether in respect of a tax imposed by Title III of such Act or in respect of so much of an estate tax imposed by any of the prior Acts enumerated in subdivision (a) of this section as was not assessed before June 3, 1924), and if the 60-day period referred to in such subdivision has not expired before the enactment of this Act and no appeal has been filed before the enactment of this Act, such person may file a petition with the Board in the same manner as if a notice of deficiency had been mailed after the enactment of this Act in respect of a deficiency in a tax imposed by this title. In such cases the 60-day period referred to in subdivision (a) of section 308 of this Act shall begin on the date of the enactment of this Act, and the powers, duties, rights, and privileges of the Commissioner and of the person entitled to file the petition, and the jurisdiction of the Board and of the courts, shall, whether or not the petition is filed, be determined, and the computation of the tax shall be made, in the same manner as provided in subdivision (a) of this section.

(d) If any deficiency in any estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, was assessed before June 3, 1924, but was not paid in full before the date of the enactment of this Act, and if the Commissioner, after the enactment of this Act, finally determines the amount of the deficiency, he is authorized to send by registered mail to the person liable for such tax notice of such deficiency, which notice shall, for the purposes of this Act, be considered a notice under subdivision (a) of section 308 of this Act. In the case of any such final determination the amount of the tax (whether as deficiency, or additional tax or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in cases of delinquency in payment after notice and demand, and the provisions relating to claims and suits for refund) as in the case of a deficiency in the tax imposed by this title, except as otherwise provided in subdivision (g) of this section, and except that the period of limitation prescribed in section 1109 of this Act shall be applied in lieu of the period prescribed in subdivision (a) of section 310.

(e) If any deficiency in any estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, was assessed before June 3, 1924, but was not paid in full before that date, and if the Commissioner after June 2, 1924, but before the enactment of this Act, finally determined the amount of the deficiency, and if the person liable for such tax appealed before the enactment of this Act to the Board of Tax

Appeals and the appeal is pending before the Board at the time of the enactment of this Act, the Board shall have jurisdiction of the appeal. In all such cases the powers, duties, rights, and privileges of the Commissioner and of the person who has brought the appeal, and the jurisdiction of the Board and of the courts, shall be determined, and the computation of the tax shall be made, in the same manner as provided in subdivision (d) of this section, except as provided in subdivision (h) of this section and except that the person liable for the tax shall not be subject to the provisions of subdivision (a) of section 319.

(f) If any deficiency in any estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, was assessed before June 3, 1924, but was not paid in full before the date of the enactment of this Act, and if the Commissioner after June 2, 1924, finally determined the amount of the deficiency, and notified the person liable for such tax to that effect less than 60 days prior to the enactment of this Act and no appeal has been filed before the enactment of this Act, the person so notified may file a petition with the Board in the same manner as if a notice of deficiency had been mailed after the enactment of this Act in respect of a deficiency in a tax imposed by this title. In such cases the 60-day period referred to in subdivision (a) of section 308 of this Act shall begin on the date of the enactment of this Act, and, whether or not the petition is filed, the powers, duties, rights, and privileges of the Commissioner and of the person who is so notified, and the jurisdiction of the Board and of the courts, shall be determined, and the computation of the tax be made, in the same manner as provided in subdivision (d) of this section.

(g) In cases within the scope of subdivision (d), (e), or (f), if the Commissioner believes that the collection of the deficiency will be jeopardized by delay, he may, despite the provisions of subdivision (a) of section 308 of this Act, instruct the collector to proceed to enforce the payment of the unpaid portion of the deficiency, and notice and demand shall be made by the collector for the payment thereof. Within 30 days after such jeopardy notice and demand the person liable for the tax may obtain a stay of collection of the whole or any part of the amount included in the notice and demand by filing with the collector a bond in like manner, under the same conditions, and with the same effect, as in the case of a bond to stay the collection of a jeopardy assessment under section 312 of this Act.

(h) In cases within the scope of subdivision (b) or (e) of this section where any hearing before the Board has been held before the enactment of this Act and the decision is rendered after the enactment of this Act, such decision shall, for the purposes of this title, be considered to have become final upon the date when it is rendered and neither party shall have any right to petition for a review of the decision. The Commissioner may, within one year from the time the decision is rendered, begin a proceeding in court for the collection of any part of the amount disallowed by the Board, unless the statutory period of limitations properly applicable thereto has expired before the appeal was taken to the Board. The court shall include in its judgment interest upon the amount thereof in the same cases, at the same rate, and for the same period, as if such amount were

collected otherwise than by proceeding in court. In any such proceeding by the Commissioner or in any suit by the taxpayer for a refund, the findings of the Board shall be prima facie evidence of the facts therein stated.

(i) Where before the enactment of this Act a jeopardy assessment has been made under subdivision (d) of section 308 of the Revenue Act of 1924 (whether of a deficiency in the tax imposed by Title III of such Act or of a deficiency in an estate tax imposed by any of the prior Acts enumerated in subdivision (a) of this section) all proceedings after the enactment of this Act shall be the same as under the Revenue Act of 1924 as amended by this Act, except that—

(1) A decision of the Board rendered after the enactment of this Act where no hearing has been held by the Board before the enactment of this Act may be reviewed in the same manner as provided in this Act in the case of a tax imposed by this title;

(2) Where no hearing has been held by the Board before the enactment of this Act, the Commissioner shall have no right to begin a proceeding in court for the collection of any part of the deficiency disallowed by the Board; and

(3) In the consideration of the case the jurisdiction and powers of the Board shall be the same as provided in this Act in the case of a tax imposed by this title.

(j) In the case of any estate or gift tax imposed by prior Act of Congress, in computing the period of limitations provided in section 310 or 311 of this Act on the making of assessments and the beginning of distraint or a proceeding in court, the running of the statute of limitations shall be considered to have been suspended (in addition to the period of suspension provided for in subdivision (b) of section 310) for any period of time prior to the enactment of this Act during which the Commissioner was prohibited from making the assessment or beginning distraint or proceeding in court.

ART. 76. Protests and petitions.—Upon completion of the investigation of the return (See Art. 67) the executor will be advised by the Supervising Internal Revenue Agent or the Internal Revenue Agent in Charge by letter of the result of the investigation, unless the time within which an assessment may be made will expire within 90 days, in which event the report of the investigation will be forwarded to the Commissioner immediately. Within 30 days from the date of such letter, or within 60 days where the executor is a nonresident or a resident of Alaska or Hawaii, the executor, if he desires to protest any part or all of the investigating agent's proposed findings, must file the protest with the Supervising Internal Revenue Agent or Internal Revenue Agent in Charge. If a hearing is desired, request therefor must be made in the protest and the hearing must be held in the office of the Supervising Internal Revenue Agent or Internal Revenue Agent in Charge who will thereafter forward to the Commissioner his recommendation, together with the report of any conference, the report of the investigating officer, the original copy of the protest, and any additional evidence or briefs submitted. If no such protest is filed within the prescribed

time, the report of the investigating officer will be forwarded to the Commissioner with the recommendation of the Supervising Internal Revenue Agent or Internal Revenue Agent in Charge.

Upon the Bureau's receipt of the investigating officer's report, the return will be audited in the Miscellaneous Tax Unit and the executor will be advised by letter of any tentatively determined deficiency in respect of the tax unless the time within which an assessment may be made will expire within 60 days, in which event the deficiency will be finally determined and notice thereof sent to the executor by registered mail. Within 30 days from the date of any letter from the Bureau setting forth the deficiency tax as tentatively determined, or within 60 days where the executor is a non-resident or a resident of Alaska or Hawaii, the executor may file a protest with, or request a hearing in, the Miscellaneous Tax Unit, but such hearing will be granted (1) only where a protest, with the supporting evidence relied upon, was filed with and a hearing was had before the Supervising Internal Revenue Agent or the Internal Revenue Agent in Charge, or, (2) where the executor was not accorded an opportunity for a hearing before the Supervising Internal Revenue Agent or the Internal Revenue Agent in Charge; except that for good cause shown the Commissioner may in any case grant a hearing in the Miscellaneous Tax Unit.

If in the course of any investigation it appears that any false statement in any notice or return has been knowingly made, or a willful attempt has been made to evade tax, the report of the investigation will be forwarded to the Commissioner without advising the executor of the proposed findings of the investigating officer. Upon the Bureau's receipt of such report, the return will be audited in the Miscellaneous Tax Unit and the executor will be advised by letter as to such taxes and penalties as may tentatively be determined, and furnished a statement showing the computation of tax and penalties, unless the time within which an assessment may be made will expire within 60 days, in which event the deficiency will be finally determined and notice thereof sent to the executor by registered mail. Within 30 days from the date of any letter from the Bureau setting forth the tentatively determined tax and penalties, or within 60 days where the executor is a non-resident or a resident of Alaska or Hawaii, the executor may file a protest with the Miscellaneous Tax Unit and a hearing will be granted if requested in the protest. In any case where it is proposed to assert the *ad valorem* penalty for fraud, the hearing on the protest of the executor will be under the supervision of the General Counsel, Bureau of Internal Revenue, whose recommendation as to the assertion of any penalty will be obtained prior to final determination of the deficiency. In any case where it is proposed to impose any penalty

mentioned in this paragraph without first advising the executor thereof, the recommendation of the General Counsel, Bureau of Internal Revenue will be obtained prior to final determination of such penalty.

Where a protest is filed, it must be accompanied by the additional evidence relied upon and may be accompanied by a brief. The protest must be filed in duplicate, and must contain (a) the name of the estate; (b) a reference to the date and symbols appearing on the letter containing the tentative findings; (c) an itemized statement of the findings to which the executor takes exception; (d) a summary statement of the grounds upon which the executor relies in connection with each exception; and (e) in case the executor desires a hearing, a statement to that effect. Protests and accompanying statements of fact, if any, must be under oath. Where there is a hearing, should the executor not appear in person, his representative who appears must present a properly executed power of attorney. (See Art. 74.)

In all cases where a deficiency in respect of a tax (including penalties or other additions to the tax provided by law) is finally determined by the Commissioner, a notice thereof will be sent to the executor by registered mail in accordance with the provisions of Section 308 (a) of the statute even though a jeopardy assessment (See Art. 77) is made. If, subsequent to the mailing of such notice, a jeopardy assessment is made in respect of the deficiency to which such notice relates no subsequent notice will be sent to the executor by the Commissioner, but if such jeopardy assessment is made; and the amount thereof is in excess of the deficiency to which the notice relates, the Commissioner will mail a notice to the executor as required by Section 308 (a) of the determination of such additional deficiency provided no petition has theretofore been filed with the Board of Tax Appeals.

Within 60 days (not counting Sunday as the sixtieth day) after the mailing of the registered letter notifying him of the final determination of a deficiency by the Commissioner, the executor may file a petition with the Board of Tax Appeals for a redetermination of the deficiency, other than a deficiency resulting from the correction of a mathematical error appearing upon the return (See Art. 77). The right to file a petition with the Board exists whether the decedent died prior or subsequent to the enactment of the Revenue Act of 1926.

Where the executor acquiesces in the tentative or final determination of the whole or any part of the deficiency, the form of notice which will be forwarded with the letter of notification, waiving the restrictions on the assessment and collection provided in Section 308 (a), should be executed by the executor and returned to the

Commissioner in order to expedite assessment which stops the accrual of interest on the amount assessed until after notice and demand by the collector in all cases where the decedent died after the enactment of the Revenue Act of 1924.

ASSESSMENT OF TAX

SEC. 308. * * * (b) If the executor files a petition with the

- Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the decision of the Board which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

(c) If the executor does not file a petition with the Board within the time prescribed in subdivision (a) of this section, the deficiency, notice of which has been mailed to the executor, shall be assessed, and shall be paid upon notice and demand from the collector.

(d) The executor shall at any time have the right, by a signed notice in writing filed with the Commissioner, to waive the restrictions provided in subdivision (a) of this section on the assessment and collection of the whole or any part of the deficiency.

(e) The Board shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the executor, and to determine whether any additional amount or addition to the tax should be assessed, if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) If after the enactment of this Act the Commissioner has mailed to the executor notice of a deficiency as provided in subdivision (a), and the executor files a petition with the Board within the time prescribed in such subdivision, the Commissioner shall have no right to determine any additional deficiency, except in the case of fraud, and except as provided in subdivision (e) of this section or in subdivision (c) of section 312. If the executor is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered, for the purposes of this subdivision or of subdivision (a) of this section, or of section 319, as a notice of a deficiency, and the executor shall have no right to file a petition with the Board of Tax Appeals based on such notice, nor shall such assessment or collection be prohibited by the provisions of subdivision (a) of this section.

(g) For the purposes of this title the date on which a decision of the Board becomes final shall be determined according to the provisions of section 1005.

* * * * *

SEC. 310. (a) Except as provided in section 311, the amount of the estate taxes imposed by this title shall be assessed within three

years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of three years after the return was filed.

(b) The running of the statute of limitations provided in this section or in section 311 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under subdivision (a) of section 308) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court, and for 60 days thereafter.

SEC. 311. (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(b) Where the assessment of any tax imposed by this title or of any estate or gift tax imposed by prior Act of Congress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the executor.

(c) This section shall not bar a distraint or proceeding in court begun before the enactment of the Revenue Act of 1924; nor shall it authorize the assessment of a tax or the collection thereof by distraint or by proceeding in court (1) if at the time of the enactment of this Act such assessment, distraint, or proceeding was barred by the statutory period of limitation properly applicable thereto, unless prior to the enactment of this Act the Commissioner and the executor agreed in writing thereto, or (2) contrary to the provisions of subdivision (a) of section 308 of this Act.

SEC. 312. (a) If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall immediately assess such deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) and notice and demand shall be made by the collector for the payment thereof.

(b) If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under subdivision (a) of section 308, then the Commissioner shall mail a notice under such subdivision within 60 days after the making of the assessment.

(c) The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the executor, despite the provisions of subdivision (f) of section 308 and whether or not the executor has theretofore filed a petition with the Board of Tax Appeals. The Commissioner shall notify the Board of the amount of such assessment, if the petition is filed with the Board before the making of the assessment or is subsequently filed, and the Board shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) If the jeopardy assessment is made after the decision of the Board is rendered such assessment may be made only in respect of the deficiency determined by the Board in its decision.

(e) A jeopardy assessment may not be made after the decision of the Board has become final or after the executor has filed a petition for review of the decision of the Board.

(f) When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in subdivision (j) of this section.

(g) If the bond is given before the executor has filed his petition with the Board under subdivision (a) of section 308, the bond shall contain a further condition that if a petition is not filed within the period provided in such subdivision, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision. * * *

(i) When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

* * * * *

Sec. 318. (a) If after the enactment of this Act the Commissioner determines that any assessment should be made in respect of any estate or gift tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or by any such Act as amended, the Commissioner is authorized to send by registered mail to the person liable for such tax notice of the amount proposed to be assessed, which notice shall, for the purposes of this Act, be considered a notice under subdivision (a) of section 308 of this Act. In the case of any such determination the amount which should be assessed (whether as deficiency or additional tax or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations

(including the provisions in case of delinquency in payment after notice and demand and the provisions prohibiting claims and suits for refund) as in the case of a deficiency in the tax imposed by this title, except that in the case of an estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, the period of limitation prescribed in section 1109 of this Act shall be applied in lieu of the period prescribed in subdivision (a) of section 310.

* * * * *

SEC. 1109. (a) Except as provided in sections * * * 310, and 311—

(1) Notwithstanding the provisions of section 3182 of the Revised Statutes or any other provision of law, all internal-revenue taxes shall (except as provided in paragraph (2) or (3) of this subdivision) be assessed within four years after such taxes became due, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of five years after such taxes became due.

(2) In case of a false or fraudulent return with intent to evade tax, of a failure to file a return within the time required by law, or of a willful attempt in any manner to defeat or evade tax, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(3) Where the assessment of any tax imposed by this Act or by prior Act of Congress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (A) within six years after the assessment of the tax, or (B) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer.

(b) This section shall not bar a distraint or proceeding in court begun before the enactment of the Revenue Act of 1924; nor shall it authorize the assessment of a tax or the collection thereof by distraint or by proceeding in court if at the time of the enactment of this Act such assessment, distraint, or proceeding was barred by the statutory period of limitation properly applicable thereto, unless prior to the enactment of this Act the Commissioner and the taxpayer agreed in writing thereto.

ART. 77. Assessments.—In any case where the Commissioner believes that the assessment or collection of a deficiency tax will be jeopardized by delay, he will make an immediate assessment thereof whether the decedent died before or after the passage of the Revenue Act of 1926. In such case the assessment may be made (1) prior to the mailing of the notice provided by Section 308 (a), or (2) within 60 days after the mailing of such notice, or (3) at any time prior to the filing of a petition for a review of a decision rendered by the Board. If the jeopardy assessment is made sub-

sequent to a decision of the Board; then the assessment is limited to the amount of the deficiency determined by the Board. Where the jeopardy assessment is made before any notice in respect of the deficiency to which the jeopardy assessment relates has been mailed under subdivision (a) of Section 308, the Commissioner will mail a notice as provided by such subdivision within 60 days after the making of such jeopardy assessment.

If an amount of tax in excess of that shown upon the return is determined to be due as a result of the correction of a mathematical error appearing upon the face of the return, the executor will be duly notified and an assessment made of the tax which would have been the correct tax but for the mathematical error. The notice that the correct amount of the tax has been assessed will not be a notice of a deficiency within the meaning of subdivision (a) of Section 308 or Section 319 and the executor has no right to file a petition with the Board of Tax Appeals based upon such notice.

Where a petition is filed with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final will be assessed, except such portion as may have been assessed as a jeopardy assessment. If no petition is filed with the Board within the time prescribed in Section 308 (a), the deficiency, notice of which has been mailed to the executor, will be assessed. Where the executor by a signed notice in writing filed with the Commissioner waives the restrictions on the assessment and collection of the whole or any part of a deficiency, assessment of such whole or part will be made immediately. (As to payment, see articles 78 to 85, inclusive.)

All assessments against executors (as to assessments against transferees and fiduciaries, see Article 105), except in the case of a false and fraudulent return, or of a failure to file a return within the time required by law, must be made within three years after the return was filed (four years after the due date of the tax if the decedent died prior to the effective date of the Revenue Act of 1924). If a petition is filed with the Board of Tax Appeals for a redetermination of the deficiency, then the period within which assessment thereof is required to be made is extended for the period during which the Commissioner is prohibited from making the assessment and for 60 days thereafter.

In case of a false or fraudulent return with intent to evade the tax, or of a failure to file a required return, the tax may be assessed, or proceedings in court for collection may be begun without assessment, at any time.

PAYMENT OF AND RECEIPTS FOR TAXES

SEC. 305. (a) The tax imposed by this title shall be due and payable one year after the decedent's death, and shall be paid by the executor to the collector. * * *

SEC. 308. * * * (b) If the executor files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. * * *

(c) If the executor does not file a petition with the Board within the time prescribed in subdivision (a) of this section, the deficiency, notice of which has been mailed to the executor, shall be assessed, and shall be paid upon notice and demand from the collector. * * *

SEC. 313. (a) The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts. * * *

SEC. 1118. (a) Collectors may receive, * * * uncertified checks in payment of income, war-profits, and excess-profits taxes and any other taxes payable other than by stamp, during such time and under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions to the same extent as if such check had not been tendered.

ART. 78. Payment of tax; General.—The tax is due and must be paid within one year from the date of the decedent's death, unless an extension of time for payment thereof has been granted by the Commissioner. (See also Art. 9.) No discount will be allowed for payment in advance of the due date. The collector will grant to the person paying the tax duplicate receipts, either of which will be sufficient evidence of such payment and entitle the executor to be credited with the amount by any court having jurisdiction to audit or settle his accounts.

Following an investigation of the return, the tax liability will be determined by the Commissioner. If the amount of tax shown on the return has been paid and exceeds the amount of tax as determined, the Commissioner will so advise the executor who shall be entitled to a refund of such excess upon the filing of a claim therefor. If the amount of tax as determined exceeds the amount of tax already paid, but is less than the amount shown on the return, the Commissioner will notify the executor of the amount of the unpaid tax, and payment thereof may then be made to the collector. Where the audit of the return does not disclose a deficiency tax, the executor will be notified to that effect. Where, as a result of the audit of the return, a deficiency in respect of the tax is finally determined, and such deficiency is in whole or in part assessed (see Art. 77), the exec-

utor should pay the amount of the deficiency assessed upon notice and demand from the collector, except where a stay of the collection of a jeopardy assessment is obtained by the filing of a bond (see Art. 96), or where an extension of time for payment is granted (see Art. 83). Until any tax determined by the Commissioner, including any deficiency, is assessed, the executor should reserve a sufficient portion of the estate to satisfy any unpaid assessment.

ART. 79. The executor shall pay the tax.—The statute provides that the executor shall pay the tax. This duty applies to the entire tax, regardless of the fact that the gross estate consists in part of property which will not come into his possession. Where there is no duly qualified executor or administrator, all persons in actual or constructive possession of any property of the decedent are liable for and required to pay the tax to the extent of the value of such property. See, also, Article 88. As to the personal liability of the executor, see Article 102.

ART. 80. Payment by check.—Collectors may accept uncertified checks in payment of the tax, provided such checks are collectible at par, that is, for the full amount, without any deduction for exchange or other charges. The collector will stamp upon the face of each check before deposit thereof the words "This check is in payment of an obligation to the United States and must be paid at par. No protest." This should be followed by his name and title. The day on which the check is received will be considered the date of payment so far as the taxpayer is concerned, unless the check is returned dishonored. If the bank on which a check is drawn should refuse to pay it at par, the check should be returned through the depository bank.

All expenses incident to the attempt to collect such a check and the return of it through the depository bank must be paid by the drawer of the check to the bank on which it is drawn. (See sec. 3210 of the Revised Statutes, as amended, reenacted by sec. 1128 (b) of the Revenue Act of 1926.) Where a check has been returned uncollected by the depository bank, the collector should proceed to collect the tax as though no check had been given, and the taxpayer will remain liable for payment of the tax and for all interest, legal penalties and additions, if any attach, to the same extent as though such check had not been tendered. A taxpayer who tenders a certified check in payment of the tax is not released from his obligation until the check has been paid. (See ch. 191 of the Act of Mar. 2, 1911.)

Treasury Department Circular No. 176, as amended, prescribes detailed regulations governing the deposit and collection of checks. Collectors are referred to paragraphs 13-16 and paragraph 26 thereof as to the deposit of taxpayers' checks and the handling of uncollected or lost items.

ART. 81. Payment by bonds or notes.—Payment of the tax may be made with bonds or notes of the United States issued under the provisions of the First Liberty Loan Act and the Second Liberty Loan Act, as amended, bearing interest at a higher rate than 4 per cent per annum, provided they were owned by the decedent continuously for at least six months prior to the date of his death, and upon such date constituted a part of his estate. Such bonds and notes are receivable at par and interest accrued at the time of the payment. When such bonds or notes are to be tendered in payment of the tax, a copy of Department Circular No. 225, as heretofore or hereafter amended or supplemented, should be procured and the requirements thereof carefully noted.

EXTENSION OF TIME FOR PAYMENT OF TAX

SEC. 305. * * *

(b) Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part not to exceed five years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension. * * *

(d) The time for which the Commissioner may extend the time for payment of the estate tax imposed by Title IV of the Revenue Act of 1921 shall be five years.

SEC. 308. * * * (i) Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax) may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of two years. If an extension is granted, the Commissioner may require the executor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties, as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. * * *

ART. 82. Extension of time for payment of tax shown on return.—In any case where the Commissioner finds that payment of the tax on the due date would impose undue hardship upon the estate, an extension or extensions of time will be granted for the payment of the tax for a period not to exceed in all five years from the due date, except that in cases arising under the Revenue Acts of 1916, 1917, and 1918, the extension is limited to three years from the due date. Extensions of time for tax payment will be granted only in exceptional cases, and where it is evident that the payment of the tax on or before the due date would impose upon the estate undue hard-

ship. The term "undue hardship" means more than an inconvenience, and it must appear that substantial financial loss or sacrifice would result from making payment of the tax at the due date.

An application for an extension of time for the payment of the tax must contain sufficient information from which the Commissioner may determine whether undue hardship would result if the requested extension were refused. The extension will not be granted on a general statement of hardship, but in each case there must be furnished a statement of the specific facts, under oath, showing what, if any, financial loss or sacrifice would result if no extension were granted.

The first extension granted will be for a period of not less than six months from the due date of the tax, and no single extension for more than one year will be granted. Application for extension of time for payment should be filed with the collector, who will refer it to the Commissioner with suitable recommendations.

An extension of time to pay the tax does not relieve from the duty of filing the return on or before the date fixed by the regulations, nor will it operate to prevent the running of interest. (See Arts. 84 and 85.)

Where the executor desires to obtain an additional extension, the application therefor must be filed with the collector on or before the date of the expiration of the previous extension; otherwise the application must be denied.

The granting of an extension of time for paying the tax is discretionary with the Commissioner and such authority will be exercised under such conditions as he may deem advisable.

ART. 83. Extension of time for payment of deficiency tax.—In any case where the Commissioner finds that payment of the deficiency tax upon the date prescribed for the payment thereof would impose undue hardship upon the estate, an extension or extensions of time will be granted for payment, with the approval of the Secretary, for a period not to exceed in all two years from the date prescribed for the payment of the deficiency. This provision applies to all estates, regardless of the date of the decedent's death.

The term "undue hardship" means more than an inconvenience, and it must appear that substantial financial loss or sacrifice would result from making payment of the deficiency at the time prescribed for the payment thereof. No extension will be granted where the deficiency is due to negligence or intentional disregard of the rules and regulations, or to fraud with intent to evade the tax.

Any application for an extension of time for the payment of a deficiency must be accompanied by evidence under oath showing

that undue hardship would result if the extension were refused. The extension will not be granted on a general statement of hardship, but in each case there must be furnished a statement of the specific facts showing what, if any, financial loss or sacrifice would result if no extension were granted.

As a condition to the granting of such an extension the Commissioner may require that a penal bond be furnished in an amount not exceeding double the amount of the deficiency. Where a bond is to be furnished it must be filed with the collector within 10 days after notification by the Commissioner that such bond is required, and shall be conditioned upon the payment of the deficiency in accordance with the terms of the extension granted, including interest upon the deficiency, as prescribed by the statute (See Art. 85), until the deficiency is paid, and shall be executed by a surety or sureties and shall be subject to the approval of the Commissioner. In lieu of such surety or sureties the bond may be secured by deposit of Liberty bonds or other bonds or notes of the United States in a sum equal at their par value to the amount of such bond. No single extension for more than one year will be granted. Application for extension of time for payment should be filed with the collector. The collector will refer the application to the Commissioner with suitable recommendations.

Where the executor desires to obtain an additional extension, the application therefor must be filed with the collector on or before the date of the expiration of the previous extension; otherwise the application must be denied.

An extension of time to pay the deficiency will not operate to prevent the running of interest. (See Art. 85.) No extension of time for paying a deficiency will be granted until after the assessment thereof and notice and demand for payment has been made by the collector. Consequently no application for extension of time for payment of a deficiency, or any part thereof, should be made prior to the receipt of such notice and demand.

The granting of an extension of time for paying the deficiency is discretionary with the Commissioner, and such authority will be exercised under such conditions as he may deem advisable.

INTEREST ON TAX

Sec. 309. (a) (1) Where the amount determined by the executor as the tax imposed by this title, or any part of such amount, is not paid on the due date of the tax, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 1 per centum a month from the due date until it is paid.

(2) Where an extension of time for payment of the amount so determined as the tax by the executor has been granted, and the amount the time for payment of which has been extended, and the

Interest thereon determined under subdivision (c) of section 305, is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subdivision, interest at the rate of 1 per centum a month shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid. * * *

Sec. 305. * * * (b) Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part not to exceed five years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

(c) If the time for the payment is thus extended there shall be collected, as a part of such amount, interest thereon at the rate of 6 per centum per annum from the expiration of six months after the due date of the tax to the expiration of the period of the extension. * * *

* * * * *

Sec. 308. * * * (h) Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the due date of the tax to the date the deficiency is assessed, or, in the case of a waiver under subdivision (d) of this section, to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier.

(i) * * * the Commissioner * * * may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of two years. * * * In such case there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. If the part of the deficiency the time for payment of which is so extended is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 1 per centum a month for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period.

(j) The 50 per centum addition to the tax provided by section 3176 of the Revised Statutes, as amended, shall, when assessed after the enactment of this Act in connection with an estate tax, be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of subdivision (h) of this section shall not be applicable.

Sec. 309. * * * (b) Where a deficiency, or any interest assessed in connection therewith under subdivision (h) of section 308, or any addition to the tax provided for in section 3176 of the Revised Statutes, as amended, is not paid in full within 30 days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 1 per centum a month from the date of such notice and demand until it is paid.

(c) If a bond is filed, as provided in section 312, the provisions of subdivision (b) of this section shall not apply to the amount covered by the bond.

* * * * *

SEC. 312. * * * (f) When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in subdivision (j) of this section.

(g) If the bond is given before the executor has filed his petition with the Board under subdivision (a) of section 308, the bond shall contain a further condition that if a petition is not filed within the period provided in such subdivision, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision. * * *

(i) When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

(j) In the case of the amount collected under subdivision (i) there shall be collected at the same time as such amount, and as a part of the tax, interest at the rate of 6 per centum per annum upon such amount from the date of the jeopardy notice and demand to the date of notice and demand under subdivision (i) of this section, or, in the case of the amount collected in excess of the amount of the jeopardy assessment, interest as provided in subdivision (h) of section 308. If the amount included in the notice and demand from the collector under subdivision (i) of this section is not paid in full within 30 days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 1 per centum a month from the date of such notice and demand until it is paid. * * *

ART. 84. Interest on tax disclosed on return.—Where any portion of the tax indicated by the return is not paid on or before the due date, and no extension of time for payment thereof has been

granted, such unpaid portion bears interest at the rate of 1 per centum a month from the due date until payment is received by the collector.

Where, however, an extension of time has been granted for paying any portion of the tax shown upon the return, the statute requires the imposition of interest upon the amount, the time for payment of which has been extended, at the rate of 6 per centum per annum from the expiration of six months after the due date of the tax (one year after the date of the decedent's death) to the expiration of the period of the extension. If the amount of tax, the time for payment of which has been extended, and the interest thereon from six months after the due date of the tax, are not paid in full prior to the expiration of the extension, or extensions, granted by the Commissioner, interest accrues upon the total unpaid amount (tax and interest), at the rate of 1 per centum a month from the date of the expiration of the extension, or extensions, until payment is received by the collector. (For an example of computation of interest at 1 per centum a month, see Art. 85.)

In any case where an extension of time is granted for paying the tax, interest will be added to the amount, the time for payment of which has been extended, from six months after the due date until the expiration of the period of extension, or extensions, even though payment may be made before the expiration thereof.

ART. 85. Interest on deficiency tax.—The statute provides that the deficiency shall bear interest at the rate of 6 per centum per annum from the due date for payment of the tax (one year after date of decedent's death) to the date the deficiency is assessed, except in the case of a waiver of the restrictions against the assessment and collection of the deficiency, and that such interest shall be assessed at the same time as the deficiency of which it becomes an integral part. The deficiency in respect to which the restrictions against the assessment and collection are waived under Section 308 (d) bears interest at the rate of 6 per centum per annum from the due date of the tax to the 30th day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier. The term "deficiency" includes any tax resulting from the correction of a mathematical error appearing upon the face of a return. (See second paragraph of Art. 77.)

Such portion of the deficiency assessed, except a deficiency with respect to which a jeopardy assessment is made and a petition to the Board is filed, as is not paid within 30 days from the date of notice and demand by the collector, bears interest at the rate of 1 per centum a month from the date of such notice and demand until payment is received by the collector unless, however, an extension

for the payment thereof has been granted. Where an extension of time for paying the deficiency, or any portion thereof, has been granted the statute requires the imposition of interest upon the amount, the time for payment of which has been extended, at the rate of 6 per centum per annum for the period of the extension, and if not paid on or before the expiration of the extension or extensions interest accrues upon the total unpaid amount (tax, interest, or additions thereto) at the rate of 1 per centum a month from the date of the expiration of the extension until payment is received by the collector.

In any case where an extension of time is granted for paying the deficiency, interest will be added to the amount, the time for payment of which has been extended, for the period of the extension, or extensions, even though payment may be made before the expiration thereof.

Example: A deficiency in the tax amounting to \$500 was determined and assessment thereof made on the 15th day of July; the due date of the tax being March 15 preceding. The amount of the assessment in this instance is \$500, plus interest thereon at 6 per centum per annum from and including March 16 to and including July 15, amounting to \$10.03, computed upon the basis of 365 days to the year (or 366 days in a leap year), or a total assessment of \$510.03, which thereupon becomes the amount of the deficiency. The date of the notice and demand by the collector for payment was August 1 following the assessment. Within 30 days thereafter \$255.02 was paid and request was made for an extension of time for paying the balance of the deficiency (\$255.01), and an extension from August 1 to and including February 1 was granted for the payment thereof. This amount bears interest at 6 per centum per annum for the period of the extension, amounting to \$7.71. The remaining liability is, therefore, \$262.72 (though paid in full prior to the expiration of the extension). The amount of liability in this instance was not paid until August 1 following the expiration of the extension. Inasmuch as the \$255.01, the time for payment of which was extended, was not paid until after the expiration of the extension, interest accrued thereon at the rate of 1 per centum a month for six months, amounting to \$15.30. (The term "month" means calendar month, i. e., a period terminating with the day of the succeeding month numerically corresponding to the day preceding the beginning of the period. If there is no such corresponding day of the succeeding month, the last day of such succeeding month is the last day of the period. Where interest at the rate of 1 per centum a month is to be computed for a period of one or more months and a fraction of a month, it should be computed for the number of whole months, and then for the fraction of a month

upon the basis of the number of days in the month which includes such fraction. Thus, for example, the elapsed period from February 14 to March 13, both dates included, is one month, and the period from February 14 to March 11, both dates included, is twenty-six twenty-eighths of a month, except that if the year be a leap year the period is twenty-seven twenty-ninths of a month.) The amount due on August 1 was, therefore, \$278.02 ($\$255.01 + 7.71 + 15.30$).

Any addition to the tax resulting from the imposition of an ad valorem penalty under the provisions of section 3176, Revised Statutes; is subject to the same provisions of law relating to the assessment, collection, and the accrual of interest, as the deficiency tax, except that such addition to the tax is not subject to any interest between the due date for payment of the tax (one year after date of decedent's death) and the date of the assessment thereof.

Where a stay of the collection of a jeopardy assessment of a deficiency tax, or any addition to the tax resulting from the imposition of an ad valorem penalty, is obtained and a petition for a redetermination of the deficiency is filed with the Board of Tax Appeals, interest accrues on such unpaid portion of the deficiency or penalty, if any, determined by a decision of the Board which is made final, at the rate of 6 per centum per annum from the date of the notice and demand from the collector following the jeopardy assessment to the date of the notice and demand by the collector subsequent to the final action taken on the petition filed with the Board. If the amount which the Board determines should have been assessed is not paid in full within 30 days after such notice and demand subsequent to the decision of the Board which has become final, interest accrues upon the unpaid amount at the rate of 1 per centum a month from the date of such notice and demand until it is paid. If the amount (exclusive of any ad valorem penalty) determined by the Board as the amount which should have been assessed is greater than the amount actually assessed the difference bears interest at the rate of 6 per centum per annum from the due date of the tax until assessment of such difference. Where the collection of the jeopardy assessment is stayed, and no petition is filed with the Board for a redetermination of the deficiency, interest accrues upon the deficiency so assessed at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of the notice and demand made by the collector after the expiration of the sixty days from the mailing by the Commissioner of the notice of the deficiency, and if not paid within 30 days after such second notice and demand by the collector interest accrues at the rate of 1 per centum a month from the date of such second notice and demand until paid.

COLLECTION OF TAX

SEC. 314. (a) If the tax herein imposed is not paid on or before the due date thereof the collector shall, upon instruction from the Commissioner, proceed to collect the tax under the provisions of general law, or commence appropriate proceedings in any court of the United States having jurisdiction, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. This subdivision in so far as it applies to the collection of a deficiency shall be subject to the provisions of section 308.

ART. 86. Remedy not exclusive.—The remedy by action, here provided, is not exclusive. For other available remedies for the collection of the tax, see Article 105.

REIMBURSEMENT

SEC. 314. * * * (b) If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution. If any part of the gross estate consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds, in excess of \$40,000, of such policies bear to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio.

ART. 87. Right to reimbursement not enforceable by Commissioner.—Where any portion of the tax is paid by, or collected out of that part of the estate passing to, or in the possession of, any person other than the duly qualified executor or administrator, such person may be entitled to reimbursement, either out of the undistributed estate or by contribution from other beneficiaries whose shares or interests in the estate would have been reduced had the tax been paid before distribution of the estate, or whose shares or interests are subject either to an equal or prior liability for the payment of taxes, debts, or other charges against the estate. The executor is entitled

to require beneficiaries under insurance policies to bear their proportion of the tax. These provisions, however, are not designed to curtail the right of the Commissioner to collect the tax from any person, or out of any property, liable therefor. The Commissioner can not be required to apportion the tax among the persons liable, nor to enforce any right to reimbursement or contribution.

LIEN

SEC. 315. (a) Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

(b) If (1) the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth) or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

SEC. 313. * * * (b) If the executor makes written application to the Commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Commissioner (as soon as possible, and in any event within one year after the making of such application, or, if the application is made before the return is filed, then within one year after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in section 310) shall notify the executor of the amount of the tax. The executor, upon payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

(c) The provisions of subdivision (b) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless the title to such part of the gross estate has passed to a bona fide purchaser for value, in which case such part shall not be subject to a lien or to any claim or

demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

ART. 88. Property subject to lien.—This lien attaches to every part of the gross estate, whether or not the property comes into the possession of the duly qualified executor or administrator. It attaches to the extent of the tax shown to be due by the return and of any deficiency tax found to be due upon review and audit.

The lien upon the entire property constituting the gross estate continues for a period of 10 years after the decedent's death, except—

(1) Where the tax is paid in full before the expiration of such period;

(2) Such portion of the gross estate as is used for the payment of charges against the estate and expenses of its administration allowed by any court having jurisdiction thereof;

(3) Such portion of the gross estate as has passed to a bona fide purchaser for value after payment of the full amount of tax determined by the Commissioner pursuant to a request of the executor for discharge from personal liability, as authorized by section 313 (b) and (c) (see Art. 67), but there is substituted a like lien upon the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

(4) Such property as was received from the decedent as a transfer by trust or otherwise in contemplation of or intended to take effect in possession or enjoyment at or after his death (except where the transfer was a bona fide sale for an adequate and full consideration in money or money's worth), and was sold by the transferee to a bona fide purchaser for such a consideration. In such case the lien attaches to all the property of the transferee except such thereof as may be sold to a bona fide purchaser for such a consideration.

(5) Where the Commissioner issues his certificate releasing such lien (see Art. 89).

ART. 89. Release of lien.—The statute provides that where the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for he may issue his certificate releasing any or all property of the estate from the lien. The issuance of certificates is a matter resting within the discretion of the Commissioner, and certificates will be issued only in case there is actual need therefor. In most cases the receipts issued by the collector constitute sufficient acquittance.

The tax will be considered fully discharged for the purpose of the issuance of a certificate only when investigation has been completed, and payment of the tax, including any deficiency finally determined, has been made. A certificate of release of lien may be issued by the

Commissioner under these circumstances as to any or all property of the estate upon the filing by the executor of an application in duplicate on Form 791. The form must contain all the information called for.

Where the tax liability has not been fully discharged, as provided above, no general certificate of release will be granted, but releases of lien upon particular items of property will be issued upon the filing with the Commissioner of such security, if any, as he may require. Where security is required, an indemnity bond must be furnished, or Liberty Bonds, or other bonds or notes of the United States, must be deposited with the collector. In lieu of such security, the Commissioner may in any case issue the release upon payment of the estimated tax upon the transfer of the property released, computed at the highest rate applicable to the estate. If, upon consideration of the application, the Commissioner finds the issuance of the certificate to be warranted, it will be issued and forwarded to the collector who will make delivery thereof to the applicant when the conditions upon which delivery is to be made are met.

PENALTIES

Sec. 320. (a) Whoever knowingly makes any false statement in any notice or return required to be filed under this title shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both.

(b) Whoever fails to comply with any duty imposed upon him by section 304, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Commissioner or any collector or law officer of the United States or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this title, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

Sec. 1114. (a) Any person required under this Act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed

by this Act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution. * * *

(e) Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

(f) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

Sec. 1103. Section 3176 of the Revised Statutes, as amended, is amended to read as follows: "Sec. 3176 * * * In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 per centum of its amount.

"The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax."

ART. 90. Nature of penalties.—Two kinds of penalties are provided for delinquency with respect to the duties imposed by the statute:

- (1) A specific penalty, to be recovered by suit, unless previously paid or adjusted by the acceptance of an offer in compromise; and
- (2) A penalty of a certain percentage of the tax, to be added to and collected in the same manner as the tax.

In any case where more than one penalty is provided the Government may assert any one or more thereof.

ART. 91. Penalties for false or fraudulent notice or return.—Where any statement in the notice or return is knowingly false, the person making it is subject to a penalty not exceeding \$5,000, or imprisonment for not exceeding one year, or both, and for a false or fraudulent return, 50 per centum will be added to the amount of the tax. Any person required to file any notice or make a return who willfully fails to do so at the time required shall be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

Any person who willfully aids or assists in the preparation or presentation of a false or fraudulent notice or return, or procures, counsels, or advises the preparation or presentation of such a notice or return, whether such falsity or fraud is with or without the knowledge or consent of the person required to make the notice or return, will be guilty of a felony and, upon conviction thereof, fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

ART. 92. Penalty for failure to file notice or return.—For failure to file the notice or return within the time prescribed, the person in default is subject to a penalty not exceeding \$500; and, for failure to file the return within the time prescribed, 25 per centum will be added to the amount of the tax, except that when a return is filed after such time and it is shown that the failure so to file was due to a reasonable cause and not to willful neglect no such addition will be made to the tax.

The ad valorem penalty of 25 per centum of the tax will not be asserted where an extension of time for filing the return was granted by the collector pursuant to the provisions of Article 68, and the return is actually filed within the period of extension granted.

ART. 93. Penalty for failure to pay tax, exhibit property, keep or exhibit records, etc.—Any person in possession or control of any record, file, or paper, containing or supposed to contain information relating to the estate, or having in his possession or control property comprised in the gross estate of the decedent, who fails to exhibit the same upon the request of the Commissioner or any collector or law officer of the United States, or his duly authorized deputy or agent, in the performance of his duties, or having knowledge or information of any fact or facts of a material bearing upon the liability, or the extent of liability, of the estate to the tax, who fails to make disclosure thereof upon request of the Commissioner or any

revenue agent or inspector designated by him for that purpose, is liable to a penalty not to exceed \$500, to be recovered by civil action. Such a request must be granted whether or not he believes that a compliance therewith is material.

Any person required to pay the tax, keep any records, or supply any information, for the purpose of the computation, assessment, or collection of the tax, who willfully fails to pay such tax, keep such records, or supply such information, as required by the law or regulations, shall, in addition to other penalties, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

Any person who willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

ART. 94. **Penalty for assisting, procuring, or advising the preparation or presentation of false or fraudulent documents.**—Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent affidavit, claim, or document, shall, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such affidavit, claim, or document, be guilty of a felony, and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

ABATEMENT AND STAY OF COLLECTION OF JEOPARDY ASSESSMENT

SEC. 312. * * * (f) When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in subdivision (j) of this section:

(g) If the bond is given before the executor has filed his petition with the Board under subdivision (a) of section 308, the bond shall contain a further condition that if a petition is not filed within the period provided in such subdivision, then the amount the collection of which is stayed by the bond will be paid on notice and demand

at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision.

(h) Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The executor shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the executor, be proportionately reduced. If the Board determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Board is rendered the bond shall, at the request of the executor, be proportionately reduced.

(i) When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector. * * *

(k) No claim in abatement shall be filed in respect of any assessment made after the enactment of this Act in respect of any estate or gift tax.

ART. 95. Claim for abatement.—No claim for abatement may be filed in respect of any assessment made after the effective date of the Revenue Act of 1926. The amount of any assessment directed to be abated by the statute as the result of a decision of the Board of Tax Appeals which has become final will be abated by the Commissioner without action on the part of the executor.

ART. 96. Collection of jeopardy assessment stayed by filing bond.—Where a jeopardy assessment has been made, the executor, within 30 days after notice and demand from the collector for payment of the amount of the jeopardy assessment may obtain a stay of collection of the whole, or any part, of the amount of such assessment by filing with the collector a bond in such amount not exceeding double the amount as to which the stay is desired and with such sureties as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated as a result of a decision of the Board which has become final, together with the interest thereon, as provided in the statute. (See Art. 85.) In lieu of such sureties there may be deposited Liberty Bonds or other bonds and notes of the United States in a sum equal at their par value to the amount of such bond. The

petition with the Board of Tax Appeals for redetermination of the deficiency in respect to which the jeopardy assessment was made must be filed within 60 days (not counting Sunday as the sixtieth day) after the mailing by the Commissioner of the notice of the final determination of the deficiency. (See Art. 76.) If the bond is given before the petition is filed with the Board, the bond shall contain a further condition that if a petition is not filed within the 60 days, then the amount, the collection of which is stayed by the bond, shall be paid on notice and demand at any time after the expiration of such 60-day period together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand made by the collector to the date of notice and demand made after the expiration of the 60-day period.

ART. 97. Accrual of interest as affected by the stay of the collection of a jeopardy assessment.—For rules relating to the accrual of interest where the collection of a jeopardy assessment is stayed by the filing of a bond, see Article 85.

ART. 98. Limitation of time to file bond to stay collection of jeopardy assessment.—If it is desired to stay the collection of the whole, or any part, of the amount in respect to which a jeopardy assessment has been made, the bond referred to in Article 96 must be filed with the collector within 30 days after notice and demand by the collector for the payment of the amount of the jeopardy assessment.

REFUNDS

SEC. 319. (a) If the Commissioner has mailed to the executor a notice of deficiency under subdivision (a) of section 308 and if the executor after the enactment of this Act files a petition with the Board of Tax Appeals within the time prescribed in such subdivision, no refund in respect of the tax shall be allowed or made and no suit for the recovery of any part of such tax shall be instituted in any court, except—

(1) As provided in subdivision (c) of this section or in subdivision (i) of section 312 or in subdivision (b), (e), or (g) of section 318 or in subdivision (d) of section 1001; and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the Board which has become final; and

(3) As to any amount collected after the statutory period of limitations upon the beginning of distraint or a proceeding in court for collection has expired; but in any such claim for refund or in any such suit for refund the decision of the Board which has become final, as to whether such period had expired before the notice of deficiency was mailed, shall be conclusive.

(b) All claims for the refunding of the tax imposed by this title alleged to have been erroneously or illegally assessed or collected must be presented to the Commissioner within three years next after the payment of such tax.

(c) If the Board finds that there is no deficiency and further finds that the executor has made an overpayment of tax, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Board has become final, be credited or refunded to the executor as provided in section 3220 of the Revised Statutes, as amended. Such refund shall be made either (1) if claim therefor was filed within the period of limitation provided for by law, or (2) if the petition was filed with the Board within four years after the tax was paid, or, in the case of a tax imposed by this title, within three years after the tax was paid.

* * * * *

SEC. 325. Any tax that has been paid under the provisions of Title III of the Revenue Act of 1924 prior to the enactment of this Act in excess of the tax imposed by such title as amended by this Act shall be refunded without interest.

* * * * *

SEC. 1106. (a) The bar of the statute of limitations against the United States in respect of any internal-revenue tax shall not only operate to bar the remedy but shall extinguish the liability; but no credit or refund in respect of such tax shall be allowed unless the taxpayer has overpaid the tax. The bar of the statute of limitations against the taxpayer in respect of any internal-revenue tax shall not only operate to bar the remedy but shall extinguish the liability; but no collection in respect of such tax shall be made unless the taxpayer has underpaid the tax.

(b) If after a determination and assessment in any case the taxpayer has paid in whole any tax or penalty, or accepted any abatement, credit, or refund based on such determination and assessment, and an agreement is made in writing between the taxpayer and the Commissioner, with the approval of the Secretary, that such determination and assessment shall be final and conclusive, then (except upon a showing of fraud or malfeasance or misrepresentation of fact materially affecting the determination or assessment thus made) (1) the case shall not be reopened or the determination and assessment modified by any officer, employee, or agent of the United States, and (2) no suit, action, or proceeding to annul, modify, or set aside such determination or assessment shall be entertained by any court of the United States.

SEC. 1111. Section 3220 of the Revised Statutes, as amended, is amended to read as follows:

"SEC. 3220. Except as otherwise provided in sections 284 and 319 of the Revenue Act of 1926 the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal-revenue taxes collected by him, with the cost and expenses of suit;

also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section."

SEC. 1112. Section 3228 of the Revised Statutes, as amended, is amended to read as follows:

"SEC. 3228. (a) All claims for the refunding or crediting of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as provided in sections 284 and 319 of the Revenue Act of 1926, be presented to the Commissioner of Internal Revenue within four years next after the payment of such tax, penalty, or sum.

"(b) Except as provided in section 284 of the Revenue Act of 1926, claims for credit or refund (other than claims in respect of taxes imposed by the Revenue Act of 1916, the Revenue Act of 1917, or the Revenue Act of 1918) which at the time of the enactment of the Revenue Act of 1921 were barred from allowance by the period of limitation then in existence, shall not be allowed."

ART. 99. Claim for refund.—In the absence of an agreement made in accordance with the provisions of section 1106 of the Statute, a claim may be filed for refund of any tax, interest, or penalty, alleged to be excessive, or illegal, where the payment thereof has been made either upon the basis of the return or as a deficiency, except where, after the enactment of the Revenue Act of 1926, a petition is properly filed with the Board of Tax Appeals for a redetermination of the deficiency the amount that may be refunded is limited to the amount collected in excess of the amount computed in accordance with the decision of the Board which has become final or the amount computed in accordance with the final decision of the court where a petition for review of the decision of the Board is filed. A decision rendered by the Board of Tax Appeals after the enactment of the Revenue Act of 1926 upon an appeal filed prior to the passage of such act does not restrict the right of the executor to file a claim for refund.

Claims for refund of estate tax imposed by the Revenue Act of 1926 must be presented to the Commissioner within three years next after the payment of the amount sought to be refunded, except that a claim may thereafter be filed in any case for the refund of an overpayment computed in accordance with a decision of the Board of Tax Appeals which has become final provided the petition for redetermination of the deficiency was filed with the Board within three years next after payment of the tax. Where, however, the tax was imposed by the Estate Tax Title of any Revenue Act prior to

the Revenue Act of 1926 the period within which the claim must be presented to the Commissioner is four years, except that a claim may thereafter be filed for a refund of an overpayment determined by the Board as a result of a petition filed with the Board after the enactment of the Revenue Act of 1926 and within four years from date of payment. Any tax imposed by Title III of the Revenue Act of 1924 which was paid prior to the enactment of the Revenue Act of 1926 in excess of the amount of tax imposed by the Revenue Act of 1924 as amended by the Revenue Act of 1926 is not deemed to have been erroneously or illegally collected and hence a claim for the refund of such excess is not subject to the four year limitation set out in the next preceding sentence. Furthermore, the four year limitation of time within which claims for refund must be presented to the Commissioner does not apply in a case where a refund is sought under the provisions of the last paragraph of sections 401 and 403 of the Revenue Act of 1921.

Claims for refund must be made on Form 843 and filed with the collector for the district in which the tax was paid and the amount of the refund shall not exceed the portion of the tax paid during the three or four year period, as the case may be, immediately preceding the filing of the claim, or the filing of the petition with the Board of Tax Appeals. The collector will thereafter present the claim to the Commissioner for consideration. Claims filed with the collector will be deemed to have been filed with the Commissioner. Upon receipt, by the Commissioner, of any claim for refund, other than a claim for refund of an overpayment determined in accordance with a decision of the Board of Tax Appeals which has become final, the return of the estate will be reaudited and only the excess payment determined by the Commissioner as a result of such audit will be refunded. If the reaudit reveals that the tax has been underpaid, the amount of such underpayment will be collected unless the collection thereof is barred.

Except a claim for refund of an overpayment computed in accordance with a decision of the Board of Tax Appeals which has become final, the burden of proof rests upon the claimant and all facts relied upon in support of the claim must be clearly set forth under oath. With all claims there should be submitted:

(1) Where the claim is made by an executor or administrator, a certificate of the court must be furnished showing that the appointment remains in full force and effect.

(2) Where the executor or administrator has been discharged and no administrator de bonis non has been appointed and qualified, there should be submitted, in lieu of the certificate above mentioned, (a) a certified copy of the court order granting the discharge, and (b) a

certified copy of the order of distribution, or, if such order does not fully disclose the identity of the person or persons entitled to receive any amount that may be refunded and the percentage or proportion thereof to which each, if more than one, is entitled, there should be submitted a certified copy of the decedent's will, if any, and such further proof as may be requisite to establish both the identity of such person or persons and the percentage or proportion of the amount sought to be refunded to which each, where there are more than one, is entitled.

(3) Where a claim is filed after the administration of the estate has been closed, and is signed by one only, or by less than all, of a number of beneficiaries entitled to share in the refund, or is signed by a person acting as attorney or agent for the interested parties, there must accompany the claim, in addition to the proof required in paragraph (2) above, a power of attorney, duly executed by all beneficiaries entitled to any portion of the repayment, authorizing the claimant or claimants to present the matter before the Bureau.

INTEREST ON REFUNDS

Sec. 1116. (a) Upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment made under the Revenue Act of 1921, the Revenue Act of 1924, or this Act, then to the date of the assessment of that amount.

ART. 100. **Payment of claims and interest.**—Under the law warrants in payment of claims allowed can only be drawn payable to the person or persons entitled to the proceeds, and consequently can not be drawn payable to attorneys or agents. If the claimants are indebted to the United States for taxes, such taxes must be paid before the warrants are delivered. (Act of March 3, 1875 (18 Stats. 481).)

Upon the allowance of a claim for refund of any tax or penalty paid, the statute provides for the payment of interest upon the total amount of such refund at the rate of 6 per centum per annum from the date such tax or penalty was paid to the date of the allowance of the refund claim.

POWER TO COMPROMISE OR REMIT PENALTIES

Revised Statutes, Sec. 3229 (Comp. Sts., 1916, Sec. 5952). The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case

arising under the internal-revenue laws instead of commencing suit thereon; and, with the advice and consent of the said Secretary and the recommendation of the Attorney-General, he may compromise any such case after a suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of the Commissioner the opinion of the Solicitor of Internal Revenue, or of the officer acting as such, with his reasons therefor, with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise.

ART. 101. Power to compromise or remit.—The Commissioner, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal-revenue laws instead of commencing suit thereon, and with the advice and consent of the Secretary, and upon the recommendation of the Attorney-General, may compromise any such case after suit thereon has been commenced by the United States. Accordingly, the power to compromise extends to (a) both civil and criminal cases; (b) cases whether before or after suit; and (c) both taxes and penalties, except that taxes legally due from a solvent taxpayer may not be compromised. Refunds can not be made of accepted offers in compromise in cases where it is subsequently ascertained that no violation of law was involved.

PERSONAL LIABILITY OF EXECUTOR

Revised Statutes, Sec. 3467 (Comp. Sts., 1916, Sec. 6373). Every executor, administrator, or assignee, or other person, who pays any debts due by the person or estate from [for] whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

ART. 102. Extent of liability.—The executor is personally liable for the payment of the tax if he pays any debts due by the decedent, or his estate, before he pays the tax. Where no executor or administrator has been appointed, every person in actual or constructive possession of any property of the decedent is liable for the tax as an executor.

EXAMINATION OF RECORDS AND TAKING OF TESTIMONY

SEC. 1104. The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the

person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

Sec. 1122. (a) If any person is summoned under this Act to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(b) The district courts of the United States at the instance of the United States are hereby invested with such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the provisions of this Act. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such provisions.

(c) The paragraph added by section 1310 of the Revenue Act of 1921 at the end of paragraph Twentieth of section 24 of the Judicial Code, relating to the jurisdiction of districts courts, as amended, is reenacted without change, as follows:

"Concurrent with the Court of Claims, of any suit or proceeding, commenced after the passage of the Revenue Act of 1921, for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected, under the internal-revenue laws, even if the claim exceeds \$10,000, if the collector of internal revenue by whom such tax, penalty, or sum was collected is dead or is not in office as collector of internal revenue at the time such suit or proceeding is commenced."

ART. 103. Securing evidence—Taking testimony.—In order to ascertain the correctness of a return, or to make a return where none has been made, the Commissioner has power to require the attendance, and to take the testimony, of the person rendering the return, or any officer or employee of such person, or any other person having knowledge in the premises. Such persons may be required to produce any relevant book, paper, or other record. This power may be exercised by any revenue agent or inspector designated for the purpose. (For penalties, see Art. 93.)

ART. 104. Power to compel compliance.—Where any person is summoned to appear and testify, or to produce books, papers, or other data, the District Court of the United States for the district in which such person resides has power to compel the giving of the testimony, the production of the books, papers, or data, and to issue any appropriate process, writ, or order.

REMEDIES FOR COLLECTION

SEC. 1100. All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act.

SEC. 311. * * * (b) Where the assessment of any tax imposed by this title or of any estate or gift tax imposed by prior Act of Congress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the executor.

SEC. 316. (a) The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this title (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) The liability, at law or in equity, of a transferee of property of a decedent or donor, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed by this title or by any prior estate tax Act or by any gift tax Act.

(2) The liability of a fiduciary under section 3467 of the Revised Statutes in respect of the payment of any such tax from the estate of the decedent or donor.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the executor or donor; or

(2) If the period of limitation for assessment against the executor expired before the enactment of this Act but assessment against the executor was made within such period,—then within six years after the making of such assessment against the executor, but in no case later than one year after the enactment of this Act.

(3) If a court proceeding against the executor or donor for the collection of the tax has been begun within either of the above periods,—then within one year after return of execution in such proceeding.

(c) The running of the period of limitation upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under subdivision (a) of section 308 to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary, and for 60 days thereafter.

(d) This section shall not apply to any suit or other proceeding for the enforcement of the liability of a transferee or fiduciary pending at the time of the enactment of this Act.

(e) As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee.

ART. 105. Remedies for collection of tax and claims against transferred assets.—Three remedies are provided for the collection of the tax:

(1) *Collection by distraint.*—The collector may issue warrant of distraint authorizing the seizure and sale of any or all of the assets of the estate. (See R. S., Secs. 3187 et seq., as amended by Sec. 1016 of the Revenue Act of 1924.)

(2) *Collection by suit to subject the property to sale.*—The collector may commence in any court of the United States appropriate proceedings, in the name of the United States, to subject the property of the decedent to sale under the judgment or decree of the court.

(3) *Collection by suit for personal liability.*—The personal liability of the executor, of the transferee or trustee of property transferred in contemplation of or intended to take effect in possession or enjoyment at or after decedent's death, and of the beneficiary of life insurance, may be enforced by any appropriate action.

(4) *Claims against transferred assets.*—The amount for which a transferee of the property of a decedent is liable, at law or in equity, and the amount of the personal liability of a fiduciary under section 3467 of the Revised Statutes, in respect of any estate tax imposed by Title III of the Revenue Act of 1926, or by prior acts, whether shown on the return of the executor or determined as a deficiency in the tax, shall be assessed against such transferee or such fiduciary, as the case may be, and collected and paid, in the same manner and subject to the same provisions and limitations as in the case of a deficiency imposed by Title III of the Revenue Act of 1926, except as hereinafter provided. The provisions relating to the payment of the tax and interest, the authorization of distraint and proceedings in court for collection, the prohibition of claims for abatement and claims and suits for refund, the filing of a petition with the Board of Tax Appeals and the filing of a petition for review of the board's decision, are included in various sections and articles relating to deficiencies in tax imposed by Title III.

The term "transferee" as used in this article includes an heir, legatee, devisee, and distributee of an estate of a deceased person.

The period of limitation for assessment of the liability of a transferee or of a fiduciary, referred to in the first paragraph of this article, is as follows:

(a) Within one year after the expiration of the period of limitation for assessment against the taxpayer. (See sections 308, 310, 311, 312, 318, and 1109, and Art. 77.)

(b) If the period of limitation for assessment against the executor expired before the enactment of the Revenue Act of 1926 but assessment against the executor was made within such period, then within

six years after the making of such assessment against the executor, but in no case later than one year after the enactment of the Revenue Act of 1926.

(c) If a court proceeding against the executor for the collection of the tax has been begun within the period of limitation for the bringing of such proceeding, then within one year after the return of execution in such proceeding.

If a notice of the liability of a transferee, or the liability of a fiduciary, has been mailed to such transferee or to such fiduciary under the provisions of section 308 (a) (see Art. 76), then the running of the statute of limitations shall be suspended for a period in which the Commissioner is prohibited from making the assessment and for 60 days thereafter.

The provisions of section 316 do not apply in any suit or proceeding for the enforcement of the liability of a transferee, or a fiduciary under section 3467 of the Revised Statutes, which was pending at the time of the enactment of the Revenue Act of 1926.

RECORDS, STATEMENTS, AND SPECIAL RETURNS

SEC. 1102. (a) Every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as the Commissioner deems sufficient to show whether or not such person is liable to tax. * * *

(d) Any oath or affirmation required by the provisions of this Act or regulations made under authority thereof may be administered by any officer authorized to administer oaths for general purposes by the law of the United States or of any State, Territory, or possession of the United States, wherein such oath or affirmation is administered, or by any consular officer of the United States.

ART. 106. **Executor's duty to keep records.**—It is the duty of the executor to keep such records as the Commissioner may require. Executors are required to keep such complete and detailed records of the affairs of the estate as will enable the Commissioner to determine accurately the amount of the tax liability.

ART. 107. **Executor's duty to render statements.**—It is the duty of the executor not only to make the formal return, but also to render any other sworn statement which the Commissioner may require for the purpose of determining whether a tax liability exists and, if so, the extent thereof.

ESTATES ADMINISTERED IN THE UNITED STATES COURT FOR CHINA

Sec. 321. (a) The term "resident" as used in this title includes a citizen of the United States with respect to whose property any probate or administration proceedings are had in the United States Court for China. Where no part of the gross estate of such decedent is situated in the United States at the time of his death, the total amount of tax due under this title shall be paid to or collected by the clerk of such court, but where any part of the gross estate of such decedent is situated in the United States at the time of his death, the tax due under this title shall be paid to or collected by the collector of the district in which is situated the part of the gross estate in the United States, or, if such part is situated in more than one district, then the collector of such district as may be designated by the Commissioner.

(b) For the purpose of this section the clerk of the United States Court for China shall be a collector for the territorial jurisdiction of such court, and taxes shall be collected by and paid to him in the same manner and subject to the same provisions of law, including penalties, as the taxes collected by and paid to a collector in the United States.

NOTICE OF PERSONS ACTING AS FIDUCIARY

Sec. 317. (a) Upon notice to the Commissioner that any person is acting as executor, such person shall assume the powers, rights, duties, and privileges of an executor in respect of a tax imposed by this title or by any prior estate tax Act, until notice is given that such person is no longer acting as executor.

(b) Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 316, the fiduciary shall assume on behalf of such person the powers, rights, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person), until notice is given that the fiduciary capacity has terminated.

(c) Notice under subdivision (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

(d) In the absence of any notice to the Commissioner under subdivision (a) or (b), notice under this title of a deficiency or other liability, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for the purposes of this title.

Art. 108. Notice of persons acting as fiduciary.—The "notice to the Commissioner" provided for in section 317 shall be in writing signed by the fiduciary and filed with the Commissioner, setting forth the name and address of the person for whom he is acting in a fiduciary capacity and also the nature of the liability of such person, accompanied by satisfactory evidence of his authority to act for such person in the fiduciary capacity. If the fiduciary capacity exists by order of court, a certified copy of the order of the court may be regarded as such satisfactory evidence. The written notice

to the Commissioner need not be accompanied by evidence of the authority of the fiduciary to act if there is already on file with the Commissioner satisfactory evidence of the authority to act. Any such written notice which has been filed with the Commissioner since the enactment of the Revenue Act of 1926 shall be considered as sufficient notice to the Commissioner within the meaning of section 317 if and when there is or has been filed with the Commissioner the satisfactory evidence herein provided for. When the fiduciary capacity has terminated, the fiduciary, in order to be relieved of any further duty or liability as such, must file with the Commissioner written notice that the fiduciary capacity has terminated as to him, accompanied by satisfactory evidence of the termination of the fiduciary capacity. Such written notice should state the name and address of the person, if any, who has been substituted as fiduciary.

This article, made under the provisions of section 317 of the Revenue Act of 1926, shall not be taken to abridge in any way the powers and duties of fiduciaries provided for in other sections of Title III of the Act or in any prior estate tax Act.

SCOPE OF REPEAL .

SEC. 1200. (a) The following parts of the Revenue Act of 1924 are repealed, to take effect (except as otherwise provided in this Act) upon the enactment of this Act, subject to the limitations provided in subdivision (b) :

* * * * *

Part I of Title III (called "Estate Tax") ;

* * * * *

Sections 1004, 1005, 1006, and 1007, subdivision (a) of section 1008, sections 1009, 1010, 1011, 1012, 1014, 1018, 1019, and 1020, subdivisions (a) and (b) of section 1021, subdivision (c) of section 1025, and sections 1026, 1027, 1028, 1029, 1030, and 1031 (being certain administrative provisions).

(b) The parts of the Revenue Act of 1924 which are repealed by this Act shall (except as provided in sections 283 and 313 and except as otherwise specifically provided in this Act), remain in force for the assessment and collection of all taxes imposed by such Act, and for the assessment, imposition, and collection of all interest, penalties, or forfeitures which have accrued or may accrue in relation to any such taxes and for the assessment and collection, to the extent provided in the Revenue Act of 1924, of all taxes imposed by prior income, war-profits, or excess-profits tax acts, and for the assessment, imposition, and collection of all interest, penalties, or forfeitures which have accrued or may accrue in relation to any such taxes. In the case of any tax imposed by any part of the Revenue Act of 1924 repealed by this Act, if there is a tax imposed by this Act in lieu thereof, the provision imposing such tax shall remain in force until the corresponding tax under this Act takes effect under the provisions of this Act.

ART. 109. Scope of repeal.—The Revenue Act of 1926 retains in force (except as provided in section 318) the provisions of Part I, Title III of the Revenue Act of 1924, and the provisions of estate tax titles of all prior Acts, for the assessment and collection of all taxes accruing thereunder and for the imposition and collection of all penalties which have accrued or may accrue in relation to any such taxes.

RULES AND REGULATIONS

SEC. 1101. The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this Act.

ART. 110. Promulgation of regulations.—In pursuance of the statute, the foregoing regulations are hereby made and promulgated, and all rulings inconsistent therewith are hereby revoked, except as in this article indicated. These regulations apply to all pending estate tax cases except where a particular question is governed by a specific provision of the earlier statutes differing from the Revenue Act of 1926, in which cases the provisions of the applicable statute control and Regulations 37 (Revised January, 1921). Regulations 63 and Regulations 68 to that extent remain in full force and effect, subject to the following changes: Article 25, Regulations 37, and Article 21, Regulations 63, have been amended by Treasury Decision 3487 to read as follows:

“Reservation of powers.—Where a transfer by trust or otherwise is subject to revocation by the donor, or the terms thereof may be altered or amended by him, or he reserves to himself the right to take or assume either full or partial control of the transferred property, or to direct or control the management thereof, all facts and circumstances bearing upon the donor's intent are to be considered, and if it appears that he intended the transfer to take effect in possession or enjoyment at or after his death, then the value of the transferred property should be included in the gross estate, unless it further appears that the transfer was a bona fide sale for a fair consideration in money or money's worth.”

The second and third sentences of the first paragraph of Article 52, Regulations 37 (Revised January, 1921) and the second sentence of the first paragraph of Article 46, Regulations 63, were amended by Article 109 of Regulations 68 to read as follows:

“It is limited to one exchange, and consequently when the property originally received is sold the right to the deduction is limited to the proceeds of the sale. If, however, the proceeds are reinvested, more than one exchange has been effected, and the right to the deduction is lost.”

Section 322 (a) of the Revenue Act of 1926 amends section 301 (a) of the Revenue Act of 1924 and section 323 (a) of the Revenue

Act of 1926 repeals the last sentence of paragraph (3) of subdivisions (a) and (b) of section 303 of the Revenue Act of 1924 (see appendix). In pursuance of such amendment and repeal, Regulations 68 were amended by Treasury Decision 3842 in the following respects: In lieu of the third sentence of Article 7, there was substituted the following:

"The rates imposed by the Revenue Act of 1924, as originally enacted, were different from those prescribed in any of the prior acts, but Section 322 of the Revenue Act of 1926 amends Section 301 (a) of the Revenue Act of 1924, effective as of June 2, 1924, so as to impose the same rates prescribed in the Revenue Acts of 1918 and 1921. The rates imposed by the Revenue Act of 1924, as amended, are applicable to the estates of decedents dying after the enactment thereof but before 10:25 a. m., Washington, D. C., time, February 26, 1926."

The table appearing in Article 7 was amended by eliminating the rates of tax appearing in column 5 and substituting therefor the rates of tax appearing in column 4 of the table.

Article 8, except the table for computing estate tax, was amended to read as follows:

"**ART. 8. Computation of tax.**—For the purpose of computing the tax, the net estate is divisible into blocks, each block being taxed at a different and increasing rate. The preceding table gives the amount of the various blocks and the applicable rate of tax under each of the taxing acts. For example, the tax upon the net estate of \$1,240,000 of a decedent dying on July 1, 1924, is computed as follows:

Amount of First block	\$50,000 at 1 per cent.....	\$500
Amount of Second block	100,000 at 2 per cent.....	2,000
Amount of Third block	100,000 at 3 per cent.....	3,000
Amount of Fourth block	200,000 at 4 per cent.....	8,000
Amount of Fifth block	300,000 at 6 per cent.....	18,000
Amount of Sixth block	250,000 at 8 per cent.....	20,000
Remainder	240,000 at 10 per cent.....	24,000

Total net estate.....	\$1,240,000	Total tax.....	\$75,500
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On the following page will be found a table for ascertaining the tax without the detailed computation given above. An illustration of its use is as follows: The net estate of a decedent dying July 1, 1924, amounts to \$1,240,000. By reference to the table it will be seen that the last complete block preceding this amount is \$1,000,000, and that the total tax computed on a million dollars under the rates in force amounts to \$51,500. Upon the remainder of the net estate, \$240,000, the tax is computed at the rate set out in the next following line, or at 10 per cent. The tax on this amount is consequently \$24,000. The following result is thus obtained:

Total tax on	\$1,000,000 =	\$51,500
Tax on	240,000 =	24,000
Totals	\$1,240,000	\$75,500 "

The table for computing estate tax, appearing in Article 8, was amended by eliminating therefrom column 5 and by amending the heading of column 4 to read as follows:

"From 6:55 p. m., Feb. 24, 1919, to 10:25 a. m., Feb. 26, 1926, inclusive (Revenue Acts of 1918, 1921 and 1924, as amended)."

Article 44 was amended by eliminating therefrom the last paragraph.

C. B. NASH,
Acting Commissioner of Internal Revenue.

Approved August 24, 1926.

GARRARD B. WINSTON,

Acting Secretary of the Treasury.

APPENDIX

REVENUE ACT OF 1924, AS AMENDED

(Amendments effective as of June 2, 1924)

TITLE III

PART I.—ESTATE TAX

SEC. 300. When used in Part I of this title—

The term “executor” means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent;

The term “net estate” means the net estate as determined under the provisions of section 303;

The term “month” means calendar month; and

The term “collector” means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner.

SEC. 301. (a) In lieu of the tax imposed by Title IV of the Revenue Act of 1921, a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 303) is hereby imposed upon the transfer of the net estate of every decedent dying after the enactment of this Act, whether a resident or nonresident of the United States:

1 per centum of the amount of the net estate not in excess of \$50,000;

2 per centum of the amount by which the net estate exceeds \$50,000 and does not exceed \$150,000;

3 per centum of the amount by which the net estate exceeds \$150,000 and does not exceed \$250,000;

4 per centum of the amount by which the net estate exceeds \$250,000 and does not exceed \$450,000;

6 per centum of the amount by which the net estate exceeds \$450,000 and does not exceed \$750,000;

8 per centum of the amount by which the net estate exceeds \$750,000 and does not exceed \$1,000,000;

10 per centum of the amount by which the net estate exceeds \$1,000,000 and does not exceed \$1,500,000;

12 per centum of the amount by which the net estate exceeds \$1,500,000 and does not exceed \$2,000,000;

14 per centum of the amount by which the net estate exceeds \$2,000,000 and does not exceed \$3,000,000;

16 per centum of the amount by which the net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

18 per centum of the amount by which the net estate exceeds \$4,000,000 and does not exceed \$5,000,000;

20 per centum of the amount by which the net estate exceeds \$5,000,000 and does not exceed \$8,000,000;

22 per centum of the amount by which the net estate exceeds \$8,000,000 and does not exceed \$10,000,000; and

25 per centum of the amount by which the net estate exceeds \$10,000,000.

(b) The tax imposed by this section shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate. The credit allowed by this subdivision shall not exceed 25 per centum of the tax imposed by this section.

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate;

(b) To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower, curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy;

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has at any time created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have

been made in contemplation of death within the meaning of Part I of this title;

(d) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has at any time created a trust, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for a fair consideration in money or money's worth;

(e) To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than a fair consideration in money or money's worth: *Provided*, That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than a fair consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further*, That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants;

(f) To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for a fair consideration in money or money's worth; and

(g) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over \$40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life.

(h) Subdivisions (b), (c), (d), (e), (f), and (g) of this section shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after the enactment of this Act.

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages upon, or any indebtedness in respect to, property (except, in the case of a resident decedent, where such property is not situated in the United States), to the extent that such claims, mortgages, or indebtedness were incurred or contracted bona fide and for a fair consideration in money or money's worth, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, or from theft, when such losses are not compensated for by insurance or otherwise, and such amounts reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or any estate, succession, legacy, or inheritance taxes;

(2) An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent; or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from such donor by gift or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax or an estate tax under this or any prior act of Congress was paid by or on behalf of the donor or the estate of such prior decedent as the case may be, and only in the amount of the value placed by the Commissioner on such property in determining the value of the gift or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate and not deducted under paragraph (1) or (3) of this subdivision;

(3) The amount of all bequests, legacies, devises, or transfers, except bona fide sales for a fair consideration in money or money's worth, in contemplation of or intended to take effect in possession or

enjoyment at or after the decedent's death, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals; and

(4) An exemption of \$50,000.

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—

(1) That proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated, but in no case shall the amount so deducted exceed 10 per centum of the value of that part of his gross estate which at the time of his death is situated in the United States;

(2) An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from such donor by gift or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax or an estate tax under this or any prior act of Congress was paid by or on behalf of the donor or the estate of such prior decedent as the case may be, and only in the amount of the value placed by the Commissioner on such property in determining the value of the gift or the gross estate of such prior decedent, and only to the extent that the value of such property is included in that part of the decedent's gross estate which at the time of his death is situated in the United States and not deducted under paragraph (1) or (3) of this subdivision; and

(3) The amount of all bequests, legacies, devises, or transfers, except bona fide sales for a fair consideration, in money or money's

worth, in contemplation of or intended to take effect in possession or enjoyment at or after the decedent's death, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used within the United States by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

(c) No deduction shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section 304 the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States.

(d) For the purpose of Part I of this title, stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States, and any property of which the decedent has made a transfer or with respect to which he has created a trust, within the meaning of subdivision (c) or (d) of section 302, shall be deemed to be situated in the United States, if so situated either at the time of the transfer or the creation of the trust, or at the time of the decedent's death.

(e) The amount receivable as insurance upon the life of a nonresident decedent, and any moneys deposited with any person carrying on the banking business, by or for a nonresident decedent who was not engaged in business in the United States at the time of his death, shall not, for the purpose of Part I of this title, be deemed property within the United States.

(f) Missionaries duly commissioned and serving under boards of foreign missions of the various religious denominations in the United States, dying while in the foreign missionary service of such boards, shall not, by reason merely of their intention to permanently remain in such foreign service, be deemed nonresidents of the United States, but shall be presumed to be residents of the State, the District of Columbia, or the Territories of Alaska or Hawaii wherein they respectively resided at the time of their commission and their departure for such foreign service.

SEC. 304. (a) The executor, within two months after the decedent's death, or within a like period after qualifying as such, shall give

written notice thereof to the collector. The executor shall also, at such times and in such manner as may be required by regulations made pursuant to law, file with the collector a return under oath in duplicate, setting forth (1) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident, of that part of his gross estate situated in the United States; (2) the deductions allowed under section 303; (3) the value of the net estate of the decedent as defined in section 303; and (4) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

(b) Return shall be made in all cases where the gross estate at the death of the decedent exceeds \$50,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate.

SEC. 305. (a) The tax imposed by Part I of this title shall be due and payable one year after the decedent's death, and shall be paid by the executor to the collector.

(b) Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part not to exceed five years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

(c) If the time for the payment is thus extended there shall be collected, as a part of such amount, interest thereon at the rate of 6 per centum per annum from the expiration of six months after the due date of the tax to the expiration of the period of the extension.

(d) The time for which the Commissioner may extend the time for payment of the estate tax imposed by Title IV of the Revenue Act of 1921 is hereby increased from three years to five years.

SEC. 306. As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax.

SEC. 307. As used in Part I of this title the term "deficiency" means—

(1) The amount by which the tax imposed by Part I of this title exceeds the amount shown as the tax by the executor upon his return;

but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the executor upon his return, or if no return is made by the executor, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax.

SEC. 308. (a) If the Commissioner determines that there is a deficiency in respect of the tax imposed by Part I of this title, the executor, except as provided in subdivision (d), shall be notified of such deficiency by registered mail, but such deficiency shall be assessed only as hereinafter provided. Within 60 days after such notice is mailed the executor may file an appeal with the Board of Tax Appeals established by section 900.

(b) If the Board determines that there is a deficiency, the amount so determined shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the Board shall be assessed, but a proceeding in court may be begun, without assessment, for the collection of any part of the amount so disallowed. The court shall include in its judgment interest upon the amount thereof at the rate of 6 per centum per annum from the date prescribed for the payment of the tax to the date of the judgment. Such proceedings shall be begun within one year after the final decision of the Board, and may be begun within such year even though the period of limitation prescribed in section 310 has expired.

(c) If the executor does not file an appeal with the Board within the time prescribed in subdivision (a) of this section, the deficiency of which the executor has been notified shall be assessed, and shall be paid upon notice and demand from the collector.

(d) If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, such deficiency shall be assessed immediately and notice and demand shall be made by the collector for the payment thereof. In such case the assessment may be made (1) without giving the notice provided in subdivision (a) of this section, or (2) before the expiration of the 60-day period provided in subdivision (a) of this section even though such notice has been given, or (3) at any time prior to the final decision by the Board upon such deficiency even though the executor has filed an appeal. If the executor does not file a claim in abatement as provided in sec-

tion 312, the deficiency so assessed (or, if the claim so filed covers only a part of the deficiency, then the amount not covered by the claim) shall be paid upon notice and demand from the collector.

(e) Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the due date of the tax to the date the deficiency is assessed.

(f) Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax) may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of two years. If an extension is granted, the Commissioner may require the executor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties, as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. In such case there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. If the part of the deficiency the time for payment of which is so extended is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 1 per centum a month for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period.

(g) The 50 per centum addition to the tax provided by section 3176 of the Revised Statutes, as amended, shall, when assessed after the enactment of this Act in connection with an estate tax, be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of subdivision (e) of this section shall not be applicable.

SEC. 309. (a) (1) Where the amount determined by the executor as the tax imposed by Part I of this title, or any part of such amount, is not paid on the due date of the tax, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 1 per centum a month from the due date until it is paid.

(2) Where an extension of time for payment of the amount so determined as the tax by the executor has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under subdivision (c) of section 305, is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subdivision, interest at the rate of 1 per centum a month shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) Where a deficiency, or any interest assessed in connection therewith under subdivision (e) of section 308, or any addition to the tax provided for in section 3176 of the Revised Statutes, as amended, is not paid in full within 30 days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 1 per centum a month from the date of such notice and demand until it is paid.

(c) If a claim in abatement is filed, as provided in section 312, the provisions of subdivision (b) of this section shall not apply to the amount covered by the claim in abatement.

SEC. 310. (a) Except as provided in section 311 and in subdivision (b) of section 308 and in subdivision (b) of section 312, the amount of the estate taxes imposed by Part I of this title shall be assessed within four years after the return was filed, and no proceeding in court for the collection of such taxes shall be begun after the expiration of five years after the return was filed.

(b) The period within which an assessment is required to be made by subdivision (a) of this section in respect of any deficiency shall be extended (1) by 60 days if a notice of such deficiency has been mailed to the executor under subdivision (a) of section 308 and no appeal has been filed with the Board of Tax Appeals, or (2) if an appeal has been filed, then by the number of days between the date of the mailing of such notice and the date of the final decision by the Board.

SEC. 311. (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(b) Where the assessment of the tax is made within the period prescribed in section 310 or in this section, such tax may be collected by distraint or by a proceeding in court, begun within six years after the assessment of the tax. Nothing in this Act shall be construed as preventing the beginning, without assessment, of a proceeding in court for the collection of the tax at any time before the expiration of the period within which an assessment may be made.

(c) This section shall not (1) authorize the assessment of a tax or the collection thereof by distraint or by a proceeding in court if at the time of the enactment of this Act such assessment, distraint, or proceeding was barred by the period of limitation then in existence, or (2) affect any assessment made, or distraint or proceeding in court begun, before the enactment of this Act.

SEC. 312. (a) If a deficiency has been assessed under subdivision (d) of section 308, the executor, within 30 days after notice and demand from the collector for the payment thereof, may file with the collector a claim for the abatement of such deficiency, or any part thereof, or of any interest or additional amounts assessed in connection therewith, or of any part of any such interest or additional amounts. Such claim shall be accompanied by a bond, in such amount, not exceeding double the amount of the claim, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount of the claim as is not abated; together with interest thereon as provided in subdivision (c) of this section. Upon the filing of such claim and bond, the collection of so much of the amount assessed as is covered by such claim and bond shall be stayed pending the final disposition of the claim.

(b) If a claim is filed as provided in subdivision (a) of this section the collector shall transmit the claim immediately to the Commissioner who shall by registered mail notify the executor of his decision on the claim. The executor may within 60 days after such notice is mailed file an appeal with the Board of Tax Appeals. If the claim is denied in whole or in part by the Commissioner (or by the Board in case an appeal has been filed) the amount, the claim for which is denied, shall be collected as part of the tax upon notice and demand from the collector, and the amount, the claim for which is allowed, shall be abated. A proceeding in court may be begun for any part of the amount, claim for which is allowed by the Board. Such proceeding shall be begun within one year after the final decision of the Board, and may be begun within such year even though the period of limitation prescribed in section 310 has expired.

(c) If the claim in abatement is denied in whole or in part, there shall be collected, at the same time as the part of the claim denied, and as a part of the tax, interest at the rate of 6 per centum per annum upon the amount of the claim denied, from the date of notice and demand from the collector under subdivision (d) of section 308 to the date of the notice and demand under subdivision (b) of this section. If the amount included in the notice and demand from the collector under subdivision (b) of this section is not paid in full within 30 days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the

rate of 1 per centum a month from the date of such notice and demand until it is paid.

(d) Except as provided in this section, no claim in abatement shall be filed in respect of any assessment made after the enactment of this Act in respect of any estate tax.

SEC. 313. (a) The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

(b) If the executor makes written application to the Commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Commissioner (as soon as possible, and in any event within one year after the making of such application, or, if the application is made before the return is filed, then within one year after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in section 310) shall notify the executor of the amount of the tax. The executor, upon payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

(c) The provisions of subdivision (b) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless the title to such part of the gross estate has passed to a bona fide purchaser for value, in which case such part shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

SEC. 314. (a) If the tax herein imposed is not paid on or before the due date thereof the collector shall, upon instruction from the Commissioner, proceed to collect the tax under the provisions of general law, or commence appropriate proceedings in any court of the United States having jurisdiction, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto.

(b) If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undis-

tributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution. If any part of the gross estate consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds, in excess of \$40,000, of such policies bear to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio.

SEC. 315. (a) Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

(b) If (1) the decedent makes a transfer of, or creates a trust with respect to, any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for a fair consideration in money or money's worth) or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for a fair consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for a fair consideration in money or money's worth.

SEC. 316. If after the enactment of this Act the Commissioner determines that any assessment should be made in respect of any estate tax imposed by the Revenue Act of 1917, the Revenue Act of

1918, or the Revenue Act of 1921, or by any such Act as amended, the amount which should be assessed (whether as deficiency or additional tax or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in case of delinquency in payment after notice and demand) as in the case of the taxes imposed by Part I of this title, except that the period of limitation prescribed in section 1009 shall be applied in lieu of the period prescribed in subdivision (a) of section 310.

SEC. 317. (a) Whoever knowingly makes any false statement in any notice or return required to be filed under Part I of this title shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both.

(b) Whoever fails to comply with any duty imposed upon him by section 304, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Commissioner or any collector or law officer of the United States or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under Part I of this title, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

SEC. 318. (a) The term "resident" as used in this title includes a citizen of the United States with respect to whose property any probate or administration proceedings are had in the United States Court for China. Where no part of the gross estate of such decedent is situated in the United States at the time of his death, the total amount of tax due under Part I of this title shall be paid to or collected by the clerk of such court, but where any part of the gross estate of such decedent is situated in the United States at the time of his death, the tax due under Part I of this title shall be paid to or collected by the collector of the district in which is situated the part of the gross estate in the United States, or, if such part is situated in more than one district, then the collector of such district as may be designated by the Commissioner.

(b) For the purpose of this section the clerk of the United States Court for China shall be a collector for the territorial jurisdiction of such court, and taxes shall be collected by and paid to him in the same manner and subject to the same provisions of law, including penalties, as the taxes collected by and paid to a collector in the United States.

LIST OF THE SEVERAL DIVISIONS AND LOCATIONS OF OFFICES OF SUPERVISING INTERNAL REVENUE AGENTS AND INTERNAL REVENUE AGENTS IN CHARGE

(Except as stated at bottom of page, communications should be addressed:
United States Internal Revenue Agent in Charge,

----- City ----- State -----)

Territory embraced	Name of division	Location of office
Alabama -----	Nashville -----	Nashville, Tenn.
Alaska -----	Seattle -----	Seattle, Wash.
Arizona -----	Denver -----	Denver, Colo.
Arkansas -----	Oklahoma City -----	Oklahoma City, Okla.
California -----	San Francisco ¹ -----	San Francisco, Calif.
Colorado -----	Denver -----	Denver, Colo.
Connecticut -----	New Haven -----	New Haven, Conn.
Delaware -----	Baltimore -----	Baltimore, Md.
District of Columbia -----	do -----	Do.
Florida -----	Jacksonville -----	Jacksonville, Fla.
Georgia -----	Atlanta -----	Atlanta, Ga.
Hawaii -----	Honolulu -----	Honolulu, Hawaii.
Idaho -----	Salt Lake City -----	Salt Lake City, Utah.
Illinois:		
Counties of Henderson, Warren, Knox, Peoria, Marshall, La Salle, Grundy, Kankakee, and counties north.	Chicago ¹ -----	Chicago, Ill.
Counties of Hancock, McDonough, Fulton, Tazewell, Woodford, Livingston, Ford, Iroquois, and counties south.	Springfield -----	Springfield, Ill.
Indiana -----	Indianapolis -----	Indianapolis, Ind.
Iowa -----	Omaha -----	Omaha, Nebr.
Kansas -----	Wichita -----	Wichita, Kans.
Kentucky -----	Louisville ¹ -----	Louisville, Ky.
Louisiana -----	New Orleans -----	New Orleans, La.
Maine -----	Boston -----	Boston, Mass.
Maryland -----	Baltimore -----	Baltimore, Md.
Massachusetts -----	Boston -----	Boston, Mass.
Michigan -----	Detroit -----	Detroit, Mich.
Minnesota -----	St. Paul -----	St. Paul, Minn.
Mississippi -----	New Orleans -----	New Orleans, La.
Missouri -----	St. Louis ¹ -----	St. Louis, Mo.
Montana -----	Salt Lake City -----	Salt Lake City, Utah.
Nebraska -----	Omaha -----	Omaha, Nebr.
Nevada -----	San Francisco ¹ -----	San Francisco, Calif.
New Hampshire -----	Boston -----	Boston, Mass.
New Jersey -----	Trenton -----	Trenton, N. J.
New Mexico -----	Denver -----	Denver, Colo.
New York:		
Manhattan Island, including Blackwells Island, Randalls Island and Wards Island, Westchester County and Bronx County (formerly Twenty-third and Twenty-fourth Wards of New York City).	New York ¹ -----	Customhouse, New York City, N. Y.
Counties of Kings, Nassau, Queens, Richmond and Suffolk.	Brooklyn -----	Brooklyn, N. Y.

¹The officers in charge at these cities are designated as Supervising Internal Revenue Agent, and should be so addressed.

Territory embraced	Name of division	Location of office
New York—Continued.		
Counties of Albany, Clinton, Columbia, Dutchess, Essex, Fulton, Greene, Hamilton, Montgomery, Orange, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, and Washington.	New Haven---	New Haven, Conn.
Counties of Franklin, Herkimer, Otsego, Delaware, and counties west.	Buffalo-----	Buffalo, N. Y.
North Carolina-----	Greensboro---	Greensboro, N. C.
North Dakota-----	St. Paul-----	St. Paul, Minn.
Ohio:		
Counties of Preble, Miami, Clark, Madison, Union, Marion, Morrow, Knox, Coshocton, Guernsey, Noble, Washington, and counties south.	Cincinnati---	Cincinnati, Ohio.
Counties of Darke, Shelby, Champaign, Logan, Hardin, Wyandot, Crawford, Richmond, Ashland, Holmes, Tuscarawas, Harrison, Jefferson, and counties north.	Cleveland----	Cleveland, Ohio.
Oklahoma -----	Oklahoma City	Oklahoma City, Okla.
Oregon -----	Seattle-----	Seattle, Wash.
Pennsylvania:		
Counties of Potter, Clinton, Center, Blair, Bedford and counties east.	Philadelphia ¹ ---	Philadelphia, Pa.
Counties of McKean, Cameron, Clearfield, Cambria, Somerset and counties west.	Pittsburgh ¹ ---	Pittsburgh, Pa.
Rhode Island -----	New Haven---	New Haven, Conn.
South Carolina -----	Columbia-----	Columbia, S. C.
South Dakota -----	St. Paul-----	St. Paul, Minn.
Tennessee -----	Nashville-----	Nashville, Tenn.
Texas -----	San Antonio---	San Antonio, Tex.
Utah -----	Salt Lake City	Salt Lake City, Utah.
Vermont -----	Boston-----	Boston, Mass.
Virginia -----	Richmond-----	Richmond, Va.
Washington -----	Seattle-----	Seattle, Wash.
West Virginia -----	Huntington---	Huntington, W. Va.
Wisconsin -----	Milwaukee ¹ ---	Milwaukee, Wis.
Wyoming -----	Denver-----	Denver, Colo.

¹ The officers in charge at these cities are designated as Supervising Internal Revenue Agent, and should be so addressed.

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TREASURY DEPARTMENT
UNITED STATES INTERNAL REVENUE

REGULATIONS 70
(1929 EDITION)

RELATING TO

ESTATE TAX

UNDER THE

REVENUE ACT OF 1926

AS AMENDED AND SUPPLEMENTED BY THE
REVENUE ACT OF 1928



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1929

These regulations apply to the estates of decedents dying after the effective date of Title III of the Revenue Act of 1926. Estate Tax Regulations 37 (revised January, 1921); Regulations 63 (1922 edition) and Regulations 68 (1924 edition) remain in force and effect only in so far as indicated in Article 110, *infra*.

(II)

REGULATIONS

RELATING TO THE

ESTATE TAX

UNDER

TITLE III OF THE REVENUE ACT OF 1926

As Amended and Supplemented by the Revenue Act of 1928

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REGULATIONS

ESTATE TAX

[Except as otherwise specified, the section references are to the Revenue Act of 1926]

TITLE III.—ESTATE TAX

SEC. 300. When used in this title—

(a) The term "executor" means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent;

(b) The term "net estate" means the net estate as determined under the provisions of section 303;

(c) The term "month" means calendar month; and

(d) The term "collector" means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner.

SEC. 301. (a) In lieu of the tax imposed by Title III of the Revenue Act of 1924, a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 303) is hereby imposed upon the transfer of the net estate of every decedent dying after the enactment of this act, whether a resident or nonresident of the United States;

1 per centum of the amount of the net estate not in excess of \$50,000;

2 per centum of the amount by which the net estate exceeds \$50,000 and does not exceed \$100,000;

3 per centum of the amount by which the net estate exceeds \$100,000 and does not exceed \$200,000;

4 per centum of the amount by which the net estate exceeds \$200,000 and does not exceed \$400,000;

5 per centum of the amount by which the net estate exceeds \$400,000 and does not exceed \$600,000;

6 per centum of the amount by which the net estate exceeds \$600,000 and does not exceed \$800,000;

7 per centum of the amount by which the net estate exceeds \$800,000 and does not exceed \$1,000,000;

8 per centum of the amount by which the net estate exceeds \$1,000,000 and does not exceed \$1,500,000;

9 per centum of the amount by which the net estate exceeds \$1,500,000 and does not exceed \$2,000,000;

10 per centum of the amount by which the net estate exceeds \$2,000,000 and does not exceed \$2,500,000;

11 per centum of the amount by which the net estate exceeds \$2,500,000 and does not exceed \$3,000,000;

12 per centum of the amount by which the net estate exceeds \$3,000,000 and does not exceed \$3,500,000;

13 per centum of the amount by which the net estate exceeds \$3,500,000 and does not exceed \$4,000,000;

14 per centum of the amount by which the net estate exceeds \$4,000,000 and does not exceed \$5,000,000;

15 per centum of the amount by which the net estate exceeds \$5,000,000 and does not exceed \$6,000,000;

16 per centum of the amount by which the net estate exceeds \$6,000,000 and does not exceed \$7,000,000;

17 per centum of the amount by which the net estate exceeds \$7,000,000 and does not exceed \$8,000,000;

18 per centum of the amount by which the net estate exceeds \$8,000,000 and does not exceed \$9,000,000;

19 per centum of the amount by which the net estate exceeds \$9,000,000 and does not exceed \$10,000,000;

20 per centum of the amount by which the net estate exceeds \$10,000,000.

ARTICLE 1. The various statutes.—The Federal estate tax was first imposed by the Act of September 8, 1916. This law was amended by the Act of March 3, 1917 (Title III), by increasing the rate of tax. The Act of October 3, 1917 (Title IX), imposed a tax upon the transfer of the net estate of decedents dying after October 3, 1917, in addition to the tax imposed by the Revenue Act of 1916, as amended. The Revenue Act of 1918 (Title IV), which became effective at 6.55 p. m., Washington, D. C., time, February 24, 1919, reduced the rates applicable to net estates below \$1,500,000, as compared with those of Title IX of the Revenue Act of 1917, and contained a number of provisions not found in any of the prior Acts. The Revenue Act of 1921 (Title IV) became effective at 3.55 p. m., Washington, D. C., time, November 23, 1921. It reenacted without change the rates of Title IV of the Revenue Act of 1918; supplanted all prior Acts as to the estates of decedents dying after the effective date thereof; embodied numerous changes, but contained many of the provisions of the earlier Acts. The Revenue Act of 1924 (Part 1, Title III), which became effective at 4.01 p. m., Washington, D. C., time, June 2, 1924, as originally enacted, increased the rates applicable to net estates in excess of \$100,000, as compared with those of Title IV of the Revenue Act of 1921; contained provisions not found in any of the prior Acts; but did not include all of the exemptions accorded by the Revenue Act of 1921.

The Revenue Act of 1926 (Title III), which became effective at 10.25 a. m., Washington, D. C., time, February 26, 1926, increased

from \$50,000 to \$100,000 the specific exemption to be deducted from the gross estates of resident decedents in determining the net estates for the purpose of the tax and made effective rates ranging from 1 to 20 per cent. The Revenue Act of 1926 amends the rates imposed by Part 1, Title III, of the Revenue Act of 1924, by substituting for such rates the same rates imposed by the Revenue Acts of 1918 and 1921; allows a credit in estates of decedents dying after the enactment of the Revenue Act of 1926, on account of State inheritance tax paid, not to exceed 80 per cent of the tax imposed by the Act; and contains provisions not found in the prior Acts. The Revenue Act of 1928 (Part 1, Title II), which became effective at 8 a. m., Washington, D. C., time, May 29, 1928, does not repeal Title III of the Revenue Act of 1926, but makes certain amendments to that title and amends and supplements the general administrative provisions of the Revenue Act of 1926. The Revenue Act of 1926, as amended and supplemented by the Act of 1928, is herein referred to as "the statute." References to other statutes are specific.

ART. 2. Transfers and interests reached.—The statute subjects to tax transfers resulting from the decedent's death; transfers made by the decedent in his lifetime, when made in contemplation of or intended to take effect in possession or enjoyment at or after his death, excepting, however, bona fide sales for an adequate and full consideration in money or money's worth; transfers, other than those made bona fide for an adequate and full consideration in money or money's worth, by the decedent in his lifetime where the enjoyment was subject at his death to any change through the exercise of a power, either by him alone or in conjunction with any person, to alter, amend, or revoke, or where any such power was relinquished by the decedent in contemplation of his death. Where, however, the decedent, within two years of his death, but subsequent to the enactment of the Revenue Act of 1926, without an adequate and full consideration in money or money's worth, made a transfer or transfers, by trust or otherwise, to any one or more persons in excess of \$5,000, not admitted or shown to have been made in contemplation of death or intended to take effect in possession or enjoyment at or after death, the aggregate value of the property in excess of \$5,000 transferred to each person shall be deemed and held to have been made in contemplation of death within the meaning of the statute.

There is also subject to tax the homestead and other exemptions; dower, curtesy, or statutory estate in lieu thereof, of the surviving spouse; property held by the decedent and another person or persons where the survivor or survivors take by right of survivorship; insurance receivable by the executor under policies taken out by the de-

cedent upon his life, and insurance so taken out and receivable by all other beneficiaries to the extent that the aggregate amount thereof exceeds \$40,000.

ART. 3. Neither a property nor an inheritance tax.—The Federal estate tax is imposed upon the transfer of the net estate of every person dying after September 8, 1916, determined in the manner prescribed by the applicable law. (See Art. 1.) The tax is not laid upon the property but upon the transfer of the entire net estate and not any particular legacy, devise, or distributive share. The relationship of the beneficiary to the decedent has no bearing upon the question of liability or the extent thereof. The transfer of property is taxable although it escheats to the State for lack of heirs.

ESTATES SUBJECT TO TAX

ART. 4. Description of taxable estates.—The tax is imposed upon the transfer of the net estate. The term "net estate" has a distinct meaning in the statute, signifying the difference between the total value of the gross estate and the total of the authorized deductions. One of the deductions authorized in the estate of a resident decedent is the specific sum of \$100,000 if the decedent died subsequent to 10.25 a. m., Washington, D. C., time, February 26, 1926, the effective date of the Revenue Act of 1926. If the decedent died prior to the effective date of the Revenue Act of 1926, the specific amount authorized to be deducted is only \$50,000. No specific deduction is authorized in the estate of a nonresident decedent.

There is no basis for tax where the value of the gross estate does not exceed the total amount of the authorized deductions, although the filing of a return is required if the decedent was a resident and the value of his gross estate at the date of his death exceeded the specific deduction as above mentioned, or, if a nonresident, any part of his gross estate was situated in the United States. As to the situs of property in estates of nonresidents, see Art. 50.

ART. 5. Definition of "resident" and "nonresident."—The statute provides (paragraph (5) of section 2 (a)) that the term "United States," when used in a geographical sense, includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

A resident is one who, at the time of his death, had his domicile in the United States; or one who was a citizen of the United States at the time of death and with respect to whose property any probate or administration proceedings are had in the United States Court for China. (See Sec. 321 (a).) A missionary who, at the time of death, was serving as such under a foreign missionary board of any religious denomination in the United States, will be presumed to have died a resident of the United States, if domiciled therein at the time

of his or her commission and departure for such service, and not a nonresident merely by reason of his or her intention to permanently remain in such service. (See Sec. 303 (f).) All persons not residents of the United States as above defined, or to whom the presumption just stated does not apply, are nonresidents.

Except as stated above, the statute takes no account of the citizenship of the decedent, but contains different provisions controlling the determination of the tax liability of the estates of residents and nonresidents.

A citizen of the United States is a nonresident if his domicile is in Porto Rico, the Philippine Islands, or other foreign country, whereas a subject or a citizen of a foreign country is a resident if his domicile is in the United States. A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal.

DETERMINATION OF TAX LIABILITY

ART. 6. Manner of determining liability.—The first step in the determination of tax liability is to ascertain the total value of the decedent's gross estate. (See Arts. 10 to 28, inclusive; also Art. 50.) The second step is to subtract from the value of the gross estate the total amount of the deductions authorized in order to arrive at the value of the net estate. (See Arts. 29 to 48, inclusive, as to estates of residents; and Arts. 51 to 55, inclusive, as to estates of nonresidents.) The third step is to obtain the sum of the percentages of successive portions of the net estate, as provided by the applicable taxing act. (See Arts. 7 and 8.)

ART. 7. Rates of tax.—The Revenue Act of 1916, the amendment thereto of March 3, 1917, the Revenue Act of 1917, the Revenue Act of 1918, and the Revenue Act of 1924, as originally enacted, each imposed different rates of tax. The rates imposed by the Revenue Act of 1921 are the same as those prescribed in the Revenue Act of 1918. The rates imposed by the Revenue Act of 1924, as originally enacted, were different from those prescribed in any of the prior Acts, but section 322 (a) of the Revenue Act of 1926 amends section 301 (a) of the Revenue Act of 1924, effective as of June 2, 1924, so as to impose the same rates prescribed by the Revenue Acts of 1918 and 1921. The rates imposed by the Revenue Act of 1926 are different from those prescribed in any of the prior Acts and are applicable to the estates of decedents dying after 10.25 a. m., Washington,

D. C., time, February 26, 1926, no change in rates being made by the provisions of the Revenue Act of 1928. A table of the several rates is given below:

Rates of estate tax

Net estate			1	2	3	4	5
Exceeding	Not exceeding	Amount of block	Act of 1926 (for effective date, see below)	Acts of 1918, 1921, and 1924, as amended (for effective dates, see below)	Act of 1917 (effective Oct. 4, 1917)	Amendment of Mar. 3, 1917 (effective Mar. 3, 1917)	Act of 1916 (effective Sept. 9, 1916)
	\$50,000	\$50,000	<i>Per cent</i> 1	<i>Per cent</i> 1	<i>Per cent</i> 2	<i>Per cent</i> 1½	<i>Per cent</i> 1
-----	100,000	50,000	2	2	4	3	2
\$50,000	150,000	50,000	3	2	4	3	2
100,000	200,000	50,000	3	3	6	4½	3
150,000	250,000	50,000	4	3	6	4½	3
200,000	400,000	150,000	4	4	8	6	4
250,000	450,000	50,000	5	4	8	6	4
400,000	600,000	150,000	5	6	10	7½	5
450,000	750,000	150,000	6	6	10	7½	5
600,000	800,000	50,000	6	8	10	7½	5
750,000	1,000,000	200,000	7	8	12	9	6
800,000	1,500,000	500,000	8	10	12	9	6
1,000,000	2,000,000	500,000	9	12	12	10	6
1,500,000	2,500,000	500,000	10	14	14	10½	7
2,000,000	3,000,000	500,000	11	14	14	10½	7
2,500,000	3,500,000	500,000	12	16	16	12	8
3,000,000	4,000,000	500,000	13	16	16	12	8
3,500,000	5,000,000	1,000,000	14	18	18	13½	9
4,000,000	6,000,000	1,000,000	15	20	20	15	10
5,000,000	7,000,000	1,000,000	16	20	20	15	10
6,000,000	8,000,000	1,000,000	17	20	20	15	10
7,000,000	9,000,000	1,000,000	18	22	22	15	10
8,000,000	10,000,000	1,000,000	19	22	22	15	10
9,000,000	-----	-----	20	25	25	15	10
10,000,000							

The rates prescribed by the different acts, as set forth in the preceding table, apply to the estates of decedents dying within the following dates:

Column 1, Revenue Act of 1926, effective from and after 10.25 a. m., February 26, 1926, Washington, D. C., time.

Column 2, Revenue Act of 1918, effective from 6.55 p. m., Washington, D. C., time, February 24, 1919, to 3.55 p. m., November 23, 1921; Revenue Act of 1921, effective from 3.55 p. m., Washington, D. C., time, November 23, 1921, to 4.01 p. m., June 2, 1924, Washington, D. C., time, and Revenue Act of 1924, as amended, effective from 4.01 p. m., June 2, 1924, to 10.25 a. m., February 26, 1926, Washington, D. C., time.

Column 3, Revenue Act of 1917, effective from October 4, 1917, to 6.55 p. m., Washington, D. C., time, February 24, 1919, inclusive.

Column 4, amendment of March 3, 1917, effective from March 3, 1917, to October 3, 1917, inclusive.

Column 5, Revenue Act of 1916, effective September 9, 1916, to March 2, 1917, inclusive.

ART. 8. Computation of tax.—For the purpose of computing the tax, the net estate is divisible into blocks, each block being taxed at a different and increasing rate. The preceding table gives the amount of the various blocks and the applicable rate of tax under each of the taxing acts. For example, the tax upon the net estate of \$1,240,000 of a decedent dying on July 1, 1926, is computed as follows:

Amount of first block.....	\$50,000 at 1 per cent.....	\$500
Amount of second block....	50,000 at 2 per cent.....	1,000
Amount of third block.....	50,000 at 3 per cent.....	1,500
Amount of fourth block....	50,000 at 3 per cent.....	1,500
Amount of fifth block.....	50,000 at 4 per cent.....	2,000
Amount of sixth block.....	150,000 at 4 per cent.....	6,000
Amount of seventh block....	50,000 at 5 per cent.....	2,500
Amount of eighth block....	150,000 at 5 per cent.....	7,500
Amount of ninth block.....	150,000 at 6 per cent.....	9,000
Amount of tenth block.....	50,000 at 6 per cent.....	3,000
Amount of eleventh block...	200,000 at 7 per cent.....	14,000
Remainder	240,000 at 8 per cent.....	19,200
<hr/>		
Total net estate.....	1,240,000	Total tax..... 67,700

On the following page will be found a table for ascertaining the tax without the detailed computation given above. An illustration of its use is as follows: The net estate of a decedent dying July 1, 1926, amounts to \$1,240,000. By reference to the table it will be seen that the last complete block preceding this amount is \$1,000,000, and that the total tax computed on a million dollars under the rates in force amounts to \$48,500. Upon the remainder of the net estate, \$240,000, the tax is computed at the rate set out in the next following line, or at 8 per cent. The tax on this amount is consequently \$19,200. The following result is thus obtained:

Total tax on.....	\$1,000,000 =	\$48,500
Tax on.....	240,000 =	19,200
<hr/>		
Total.....	1,240,000	67,700

Table for computing estate tax

Net estate		1		2		3		4		5		
Exceeding	Not ex- ceeding	Amount of block	After 10.25 a. m., Feb. 26, 1926 (Revenue Act of 1926)		From 6.55 p. m., Feb. 24, 1919 to 10.25 a. m., Feb. 26, 1926, inclusive (Reve- nue Acts of 1918, 1921, and 1924)		Oct. 4, 1917, to 6.55 p. m., Feb. 24, 1919, inclusive (Revenue Act of 1917)		Mar. 3, 1917, to Oct. 3, 1917, inclusive (Amend- ment)		Sept. 9, 1916, to Mar. 2, 1917, inclusive (Reve- nue Act of 1916)	
			Rate (per cent)	Total	Rate (per cent)	Tax	Total	Rate (per cent)	Tax	Total	Rate (per cent)	Total
-----	-----	-----	1	\$500	1	\$500	\$1,000	1½	\$750	\$750	1	\$500
\$50,000	\$50,000	\$50,000	2	1,000	2	1,000	2,000	3	1,500	2,250	2	1,000
100,000	100,000	50,000	3	1,500	3	1,500	3,000	3	2,000	2,750	3	1,500
150,000	150,000	50,000	4	2,000	4	2,000	4,000	4½	2,250	3,000	4	2,000
200,000	200,000	50,000	5	2,500	5	2,500	5,000	5	2,500	3,250	5	2,500
250,000	250,000	150,000	6	3,000	6	3,000	6,000	6	3,000	3,500	6	3,000
300,000	300,000	150,000	7	3,500	7	3,500	7,000	7½	3,750	3,750	7	3,500
350,000	350,000	150,000	8	4,000	8	4,000	8,000	8	4,000	4,000	8	4,000
400,000	400,000	150,000	9	4,500	9	4,500	9,000	9	4,500	4,250	9	4,500
450,000	450,000	150,000	10	5,000	10	5,000	10,000	10	5,000	4,500	10	5,000
500,000	500,000	150,000	11	5,500	11	5,500	11,000	11	5,500	4,750	11	5,500
550,000	550,000	150,000	12	6,000	12	6,000	12,000	12	6,000	5,000	12	6,000
600,000	600,000	150,000	13	6,500	13	6,500	13,000	13	6,500	5,250	13	6,500
650,000	650,000	150,000	14	7,000	14	7,000	14,000	14	7,000	5,500	14	7,000
700,000	700,000	150,000	15	7,500	15	7,500	15,000	15	7,500	5,750	15	7,500
750,000	750,000	150,000	16	8,000	16	8,000	16,000	16	8,000	6,000	16	8,000
800,000	800,000	150,000	17	8,500	17	8,500	17,000	17	8,500	6,250	17	8,500
850,000	850,000	150,000	18	9,000	18	9,000	18,000	18	9,000	6,500	18	9,000
900,000	900,000	150,000	19	9,500	19	9,500	19,000	19	9,500	6,750	19	9,500
950,000	950,000	150,000	20	10,000	20	10,000	20,000	20	10,000	7,000	20	10,000
1,000,000	1,000,000	1,000,000	21	10,500	21	10,500	21,000	21	10,500	7,250	21	10,500
1,050,000	1,050,000	1,000,000	22	11,000	22	11,000	22,000	22	11,000	7,500	22	11,000
1,100,000	1,100,000	1,000,000	23	11,500	23	11,500	23,000	23	11,500	7,750	23	11,500
1,150,000	1,150,000	1,000,000	24	12,000	24	12,000	24,000	24	12,000	8,000	24	12,000
1,200,000	1,200,000	1,000,000	25	12,500	25	12,500	25,000	25	12,500	8,250	25	12,500
1,250,000	1,250,000	1,000,000	26	13,000	26	13,000	26,000	26	13,000	8,500	26	13,000
1,300,000	1,300,000	1,000,000	27	13,500	27	13,500	27,000	27	13,500	8,750	27	13,500
1,350,000	1,350,000	1,000,000	28	14,000	28	14,000	28,000	28	14,000	9,000	28	14,000
1,400,000	1,400,000	1,000,000	29	14,500	29	14,500	29,000	29	14,500	9,250	29	14,500
1,450,000	1,450,000	1,000,000	30	15,000	30	15,000	30,000	30	15,000	9,500	30	15,000
1,500,000	1,500,000	1,000,000	31	15,500	31	15,500	31,000	31	15,500	9,750	31	15,500
1,550,000	1,550,000	1,000,000	32	16,000	32	16,000	32,000	32	16,000	10,000	32	16,000
1,600,000	1,600,000	1,000,000	33	16,500	33	16,500	33,000	33	16,500	10,250	33	16,500
1,650,000	1,650,000	1,000,000	34	17,000	34	17,000	34,000	34	17,000	10,500	34	17,000
1,700,000	1,700,000	1,000,000	35	17,500	35	17,500	35,000	35	17,500	10,750	35	17,500
1,750,000	1,750,000	1,000,000	36	18,000	36	18,000	36,000	36	18,000	11,000	36	18,000
1,800,000	1,800,000	1,000,000	37	18,500	37	18,500	37,000	37	18,500	11,250	37	18,500
1,850,000	1,850,000	1,000,000	38	19,000	38	19,000	38,000	38	19,000	11,500	38	19,000
1,900,000	1,900,000	1,000,000	39	19,500	39	19,500	39,000	39	19,500	11,750	39	19,500
1,950,000	1,950,000	1,000,000	40	20,000	40	20,000	40,000	40	20,000	12,000	40	20,000
2,000,000	2,000,000	1,000,000	41	20,500	41	20,500	41,000	41	20,500	12,250	41	20,500
2,050,000	2,050,000	1,000,000	42	21,000	42	21,000	42,000	42	21,000	12,500	42	21,000
2,100,000	2,100,000	1,000,000	43	21,500	43	21,500	43,000	43	21,500	12,750	43	21,500
2,150,000	2,150,000	1,000,000	44	22,000	44	22,000	44,000	44	22,000	13,000	44	22,000
2,200,000	2,200,000	1,000,000	45	22,500	45	22,500	45,000	45	22,500	13,250	45	22,500
2,250,000	2,250,000	1,000,000	46	23,000	46	23,000	46,000	46	23,000	13,500	46	23,000
2,300,000	2,300,000	1,000,000	47	23,500	47	23,500	47,000	47	23,500	13,750	47	23,500
2,350,000	2,350,000	1,000,000	48	24,000	48	24,000	48,000	48	24,000	14,000	48	24,000
2,400,000	2,400,000	1,000,000	49	24,500	49	24,500	49,000	49	24,500	14,250	49	24,500
2,450,000	2,450,000	1,000,000	50	25,000	50	25,000	50,000	50	25,000	14,500	50	25,000
2,500,000	2,500,000	1,000,000	51	25,500	51	25,500	51,000	51	25,500	14,750	51	25,500
2,550,000	2,550,000	1,000,000	52	26,000	52	26,000	52,000	52	26,000	15,000	52	26,000
2,600,000	2,600,000	1,000,000	53	26,500	53	26,500	53,000	53	26,500	15,250	53	26,500
2,650,000	2,650,000	1,000,000	54	27,000	54	27,000	54,000	54	27,000	15,500	54	27,000
2,700,000	2,700,000	1,000,000	55	27,500	55	27,500	55,000	55	27,500	15,750	55	27,500
2,750,000	2,750,000	1,000,000	56	28,000	56	28,000	56,000	56	28,000	16,000	56	28,000
2,800,000	2,800,000	1,000,000	57	28,500	57	28,500	57,000	57	28,500	16,250	57	28,500
2,850,000	2,850,000	1,000,000	58	29,000	58	29,000	58,000	58	29,000	16,500	58	29,000
2,900,000	2,900,000	1,000,000	59	29,500	59	29,500	59,000	59	29,500	16,750	59	29,500
2,950,000	2,950,000	1,000,000	60	30,000	60	30,000	60,000	60	30,000	17,000	60	30,000
3,000,000	3,000,000	1,000,000	61	30,500	61	30,500	61,000	61	30,500	17,250	61	30,500
3,050,000	3,050,000	1,000,000	62	31,000	62	31,000	62,000	62	31,000	17,500	62	31,000
3,100,000	3,100,000	1,000,000	63	31,500	63	31,500	63,000	63	31,500	17,750	63	31,500
3,150,000	3,150,000	1,000,000	64	32,000	64	32,000	64,000	64	32,000	18,000	64	32,000
3,200,000	3,200,000	1,000,000	65	32,500	65	32,500	65,000	65	32,500	18,250	65	32,500
3,250,000	3,250,000	1,000,000	66	33,000	66	33,000	66,000	66	33,000	18,500	66	33,000
3,300,000	3,300,000	1,000,000	67	33,500	67	33,500	67,000	67	33,500	18,750	67	33,500
3,350,000	3,350,000	1,000,000	68	34,000	68	34,000	68,000	68	34,000	19,000	68	34,000
3,400,000	3,400,000	1,000,000	69	34,500	69	34,500	69,000	69	34,500	19,250	69	34,500
3,450,000	3,450,000	1,000,000	70	35,000	70	35,000	70,000	70	35,000	19,500	70	35,000
3,500,000	3,500,000	1,000,000	71	35,500	71	35,500	71,000	71	35,500	19,750	71	35,500
3,550,000	3,550,000	1,000,000	72	36,000	72	36,000	72,000	72	36,000	20,000	72	36,000
3,600,000	3,600,000	1,000,000	73	36,500	73	36,500	73,000	73	36,500	20,250	73	36,500
3,650,000	3,650,000	1,000,000	74	37,000	74	37,000	74,000	74	37,000	20,500	74	37,000
3,700,000	3,700,000	1,000,000	75	37,500	75	37,500	75,000	75	37,500	20,750	75	37,500
3,750,000	3,750,000	1,000,000	76	38,000	76	38,000	76,000	76	38,000	21,000	76	38,000
3,800,000	3,800,000	1,000,000	77	38,500	77	38,500	77,000	77	38,500	21,250	77	38,500
3,850,000	3,850,000	1,000,000	78	39,000	78	39,000	78,000	78	39,000	21,500	78	39,000
3,900,000	3,900,000	1,000,000	79	39,500	79	39,500	79,000	79	39,500	21,750	79	39,500
3,950,000	3,950,000	1,000,000	80	40,000	80	40,000	80,000	80	40,000	22,000	80	40,000
4,000,000	4,000,000	1,000,000	81	40,500	81	40,500	81,000	81	40,500	22,250	81	40,500
4,050,000	4,050,000	1,000,000	82	41,000	82	41,000	82,000	82	41,000	22,500	82	41,000
4,100,000	4,100,000	1,000,000	83	41,500	83	41,500	83,000	83	41,500	22,750	83	41,500
4,150,000	4,150,000	1,000,000	84	42,000	84	42,000	84,000	84	42,000	23,000	84	42,000
4,2												

CREDITS AGAINST ESTATE TAX

SEC. 301. (b) The tax imposed by this section shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate. The credit allowed by this subdivision shall not exceed 80 per centum of the tax imposed by this section, and shall include only such taxes as were actually paid and credit therefor claimed within three years after the filing of the return required by section 304.

SEC. 404. Revenue Act of 1928. Section 322 of the Revenue Act of 1924 (relating to the credit of gift tax against estate tax where the amount of the gift is required to be included in the gross estate of the decedent) is revived as of January 1, 1926 (the effective date of its repeal by the Revenue Act of 1926). Such section shall also be applied in the case of the estate tax imposed by Title III of the Revenue Act of 1926, in the same manner and to the same extent as in the case of the estate tax imposed by Title III of the Revenue Act of 1924.

SEC. 322. Revenue Act of 1924. In case a tax has been imposed under section 319 upon any gift, and thereafter upon the death of the donor the amount thereof is required by any provision of Part I of this title to be included in the gross estate of the decedent then there shall be credited against and applied in reduction of the estate tax, which would otherwise be chargeable against the estate of the decedent under the provisions of section 301, an amount equal to the tax paid with respect to such gift; and in the event the donor has in any year paid the tax imposed by section 319 with respect to a gift or gifts which upon the death of the donor must be included in his gross estate and a gift or gifts not required to be so included, then the amount of the tax which shall be deemed to have been paid with respect to the gift or gifts required to be so included shall be that proportion of the entire tax paid on account of all such gifts which the amount of the gift or gifts required to be so included bears to the total amount of gifts in that year.

ART. 9. (a) Credit for estate, inheritance, legacy, or succession taxes.—Under the provisions of section 301 (b) the estate is entitled, under certain conditions, to a credit against the Federal estate tax for payments of estate, inheritance, legacy, or succession taxes actually made to any of the several States, Territories, or the District of Columbia. The credit allowed is limited to the estates of persons dying after the effective date of the Revenue Act of 1924.

The credit applying to the estates of persons dying after the effective date of the Revenue Act of 1924 and before the effective date of the Revenue Act of 1926 is limited to 25 per cent of the Federal estate tax. If the decedent's death occurred after the effective date of the Revenue Act of 1926, the credit is limited to 80 per cent of the Federal estate tax. No credit may be taken or allowed for any part of such taxes unless the property in respect

to which such taxes were imposed is included in the gross estate of the decedent for Federal estate tax. Where the decedent died after the effective date of the Revenue Act of 1926, the taxes allowed as a credit are limited to such taxes as were actually paid and credit therefor claimed within three years after the filing of the return.

The Federal estate tax is due and payable one year after the date of decedent's death, and in making payment of the amount shown by the return to be due the executor may claim credit, subject to the approval of the Commissioner upon audit of the return, of an estimated amount of any such taxes for which the estate will ultimately be entitled to a credit, and pay the balance of the tax disclosed by the return. Where, however, such taxes have been paid prior to the date of payment of the Federal estate tax indicated by the return, the amount thereof actually paid, but not in excess of the 25 or 80 per cent, as the case may be, of the Federal estate tax, may be claimed. Where the executor, in filing the return and discharging the tax indicated thereby, takes credit for any such taxes which the Commissioner determines, either in whole or in part, are not an allowable credit within the meaning of the applicable statute, then such credit or portion thereof taken by the executor at the time of paying the Federal estate tax as is not allowed by the Commissioner should be paid promptly, together with interest thereon, if any has accrued. (See Art. 84.) The executor should exercise care to see that he does not claim a credit in excess of the correct amount.

Where credits are allowed they will be applied against any unpaid tax, and if there then remains an amount not so applied the executor should file a claim for the refund of the amount of the Federal estate tax by which the credit exceeds the unpaid tax, or if the entire Federal estate tax has been paid, a claim for refund should be filed for the amount of the credit allowed.

Before the Commissioner allows any credit for any estate, inheritance, legacy, or succession taxes, there must be submitted to him the following:

- (1) A complete list of the property in respect to which any such taxes were imposed, and the amount thereof paid, certified under the hand and official seal of the officer of the taxing State or Territory having custody of the records pertaining to such taxes.

- (2) The certificate of the officer having custody of the records referred to, showing whether a refund of such taxes, or any part thereof, has been authorized, and whether any claim for refund thereof is pending. If any refund has been made the date, amount thereof, and a description of the property or interest in respect to which such refund was made must be shown in such certificate.

(3) An affidavit of the executor stating whether any litigation has been instituted, or appeal taken, or any such action is designed or contemplated by him, or, to his knowledge, by any beneficiary or other person, the final determination of which may affect the amount of such taxes.

The list of the property in respect to which the taxes were imposed may be prepared by the executor, if properly certified by the officer of the State or Territory. If the officer has no seal, his official position may be required by the Commissioner to be established by the submission of a certificate of the proper authority of the taxing State or Territory.

The evidence described above should be filed with the return, but if that is not convenient or possible, then it should be submitted to the investigating officer verifying the return, or if the investigation of the estate has been completed, it should be transmitted to the Commissioner.

The Commissioner may require the submission of such additional proof as is deemed necessary to establish the right to the credit.

Where, subsequent to the allowance of a credit by the Commissioner, a refund is made of any such estate, inheritance, legacy, or succession taxes, the executor, or if the refund is made after the executor's discharge, then any person or persons to whom the refund is made, is required to advise the Commissioner of the date of the refund and the amount thereof, furnish the Commissioner with a description of the property or interest in respect to which the refund was made, and pay the Federal estate tax, if any, due as a result of such refund, together with interest.

Where, either at or subsequent to the final audit of the return, the Commissioner is satisfied that the estate is entitled to a credit for the payment of any estate, inheritance, legacy, or succession taxes, he will make allowance thereof to the extent that such taxes do not exceed 80 per centum (25 per cent if the decedent died prior to the effective date of the Revenue Act of 1926) of the Federal estate tax determined upon final audit exclusive of the deficiency, if a deficiency is determined, but if such allowance is less than that to which the estate is entitled (due to the existence of a deficiency tax) then the allowance of the balance of the credit will be deferred until it is known that no petition has been or will be filed with the Board of Tax Appeals, or, if a petition is filed, until after the decision of the Board has become final.

(b) Credit for gift tax.—The credit authorized by section 322 of the Revenue Act of 1924 as revived by section 404 of the Revenue Act of 1928 applies to the estates of persons dying after the effective date of the Revenue Act of 1924. No credit may be taken for any part of the gift tax which was paid in respect to property not in-

cluded in the gross estate of the decedent for Federal estate-tax purposes. Where the executor, in filing the estate-tax return and discharging the tax indicated thereby, takes credit for any gift tax, and the Commissioner determines that such gift tax, or any portion thereof, is not an allowable credit within the meaning of the statute, then such portion of the credit taken by the executor at the time of paying the estate tax as is not allowed as a credit should be paid promptly, together with interest thereon, if any has accrued. (See Art. 83.) The executor should exercise care to see that he does not claim a credit in excess of the correct amount. No credit may be taken or allowed of any gift taxes which have been refunded, or in respect to which a claim for refund is pending.

Where a decedent made gifts which were subjected to the gift tax and upon his death the value of all such gifts is included in his gross estate for Federal estate tax purposes, the full amount of gift tax paid in respect thereto is allowable as a credit against the estate tax. Where, however, in any calendar year gifts are made and the value of only a part thereof is includible in the decedent's gross estate for Federal estate tax purposes, the amount of the gift tax which will be deemed to have been paid in respect to the gift or gifts required to be so included in the gross estate is that proportion of the entire gift tax for such calendar year which the amount of the gift or gifts required to be so included in the gross estate bears to the total amount of gifts in the calendar year. For the purpose of determining the proportion of the gift tax allowable as a credit, where only a part of the value of the gifts are included in the gross estate for Federal estate tax purposes, the values placed by the Commissioner upon the gifts control, irrespective of any increase or decrease in value between the date of gift and the date of decedent's death. For example, on July 1, 1924, a tract of land was the subject of the gift, and on November 1, 1924, the same donor made a gift of certain bonds, in contemplation of death. In fixing the amount of the gift tax for the calendar year 1924, the Commissioner determined that the value of the land on July 1, 1924 (the date of the gift thereof), was \$100,000, and the value of the gift of the bonds on November 1, 1924, was \$50,000. Upon the donor's death it is found that the value of the transferred land is not includible in the gross estate for Federal estate tax purposes, but that, having been transferred in contemplation of death, the value of the bonds forms a part of the gross estate. If no further gifts were made by the donor during the calendar year 1924, and the only deduction to which he was entitled was the \$50,000, allowable to all resident donors, the gift tax upon the two gifts would be \$1,500, computed as prescribed in section 319 of the statute (\$100,000 plus \$50,000,

minus the \$50,000 deduction, leaving \$100,000 subject to tax, the first \$50,000 being taxable at the rate of 1 per centum, and the remaining \$50,000 at the rate of 2 per centum). Of the \$1,500 gift tax, five-fifteenths will be deemed to have been paid in respect to the gift of the bonds, and hence such fractional part of the \$1,500 gift tax, or \$500, is allowable as a credit upon the Federal estate tax. The same result would be reached though the value of the bonds were deductible from the gross estate for Federal estate tax purposes.

Where the Commissioner is satisfied that the estate is entitled to a credit on account of gift tax paid, such credit will be allowed only in accordance with the conditions prescribed in the last paragraph of subsection (a) of this article.

GROSS ESTATE—GENERAL

Sec. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

(a) To the extent of the interest therein of the decedent at the time of his death.

ART. 10. Character of interests included.—It is designed by the foregoing provision of the statute that there shall be included in the gross estate the value of all property of the decedent whether real or personal, tangible or intangible, the beneficial ownership of which was in the decedent at the time of his death.

Where the decedent died prior to 10.25 a. m., Washington, D. C., time, February 26, 1926, the test which determines that the value of a given interest is to be included in the gross estate under the provisions of subdivisions (a) of the corresponding sections of the Revenue Acts prior to that of 1926, is whether the property, after death, shall be subject to: (1) Payment of the charges against the estate; (2) payment of the expenses of administration; and (3) distribution as a part of the estate. This test is not applicable if the decedent died subsequent to the effective date of the Revenue Act of 1926.

ART. 11. Specific property to be included.—The value of all real property situated in the United States and owned by the decedent at the date of his death should be included in the gross estate, whether the decedent was a resident or a nonresident, and whether the property came into the possession and control of the executor or administrator or passed directly to heirs or devisees. Where the decedent was a resident, the value of all personal property owned by him should be included, wherever situated. Where the decedent was a nonresident, the value of so much of his personal property as had its situs in the United States at the time of his death should be included, and the value of his entire gross estate, wherever situated, should be

disclosed, if deductions are claimed. (See Arts. 52 to 54.) As to the situs of the personal property of nonresident decedents, see Article 50.

The value of a vested remainder should be included in the gross estate. Nothing should be included, however, on account of a contingent remainder where the contingency does not happen in the lifetime of the decedent, and the interest consequently lapses at his death. Nor should anything be included on account of an interest or an estate limited for the life of the decedent. There should be included, however, the value of a reversionary interest retained by the decedent, which reverts upon the termination of a particular estate or in case of his prior death passes to others. There should also be included the value of an annuity payable to, or an interest or an estate vested in, the decedent for the life of another person who survives him. For rules in valuing such remainders, annuities, and interests or estates *pur autre vie*, see Article 13, subdivision (10).

A cemetery lot owned by the decedent is part of his gross estate, but its value is limited to the salable value of such part of it as is not designed for the interment of the decedent or members of his family. Salary due the decedent, and rents and interest accrued at the time of his death, whether then payable or not, and unpaid matured coupons, should be included. The value of notes or other claims held by the decedent should be included, though they are canceled by his will. As to the valuation of notes and claims, see Article 13, subdivisions (1) and (5). All bonds, including Federal, State, and municipal, should be included. (See Art. 12 for manner of listing and describing property returned.) In case the decedent was a nonresident alien not engaged in business in the United States, bonds, notes, and certificates of indebtedness of the United States, and bonds of the War Finance Corporation, beneficially owned by such alien, should not be included.

Dividends on either common or preferred stock should be included only where declared prior to the decedent's death, and not reflected in the market value of the stock on the day of death. Thus dividends, both declared and payable to holders of record on a date prior to the decedent's death should be included, provided the stock is valued "ex dividend" on the date of death.

Example: A 5 per cent dividend upon stock is declared March 1, payable on April 1, to stockholders of record on March 15. If the death occurred on March 10, and the market value on that day was 90, the value to be returned for both stock and dividend is 90, the dividend being reflected in the market value of the stock. If the death occurred on March 20, the dividend is not reflected in the market value, and must be returned in addition to the market value of the stock on March 20.

ART. 12. Description of property listed on return.—In listing upon the return the property comprising the gross estate (other than household and personal effects, as to which see subdivision (9) of Article 13), the description thereof should be such that the property may be readily identified. Thus, a legal description should be given of each parcel of real estate, and if located in a city the name of street and number, its area, and, if improved, a short statement of the character of the improvements. Description of bonds should include number held, principal amount, name of obligor, date of maturity, rate of interest, date or dates on which interest is payable, series number where there is more than one issue, the exchange upon which listed, or the principal business office of the corporation, if unlisted. Description of stocks should include number of shares, whether common or preferred, and, if preferred, what issue thereof, par value, quotation at which returned, exact name of corporation, and, if the stock is unlisted, the location of the principal business office and State in which incorporated and the date of incorporation. If a listed security, state principal exchange upon which sold. Description of notes should include name of maker, date on which given, date of maturity, amount of principal, amount of principal unpaid, rate of interest and whether simple or compound, date to which interest has been paid and amount of unpaid interest. Description of land contracts received should include name of vendee, date of contract, description of property, sale price, initial payment, amounts of installment payments, unpaid balance of principal and accrued interest, interest rate and date prior to decedent's death to which interest had been paid. Description of bank accounts should disclose name and address of depository, amount on deposit, whether a checking, savings, or a time-deposit account, rate of interest, if any payable, amount of interest accrued and payable, and serial number. Description of life insurance should give the name of the insurer, number of policy, face value, name of beneficiary, and amount paid or payable thereunder. In describing an annuity, the name and address of the grantor of the annuity should be given, or if payable out of a trust or other funds such a description as will fully identify it. If payable for a term of years, the duration of the term and the date on which it began should be given, and if payable for the life of a person other than the decedent, the date of birth of such person should be stated. Judgments should be described by giving the title of the cause and the name of the court in which rendered, date of judgment, name and address of judgment debtor, amount of judgment, rate of interest to which subject, whether any payments have been made thereon, and, if so, when and in what amounts.

VALUATION OF PROPERTY

ART. 13. Valuations.—(1) *General.*—The value of all property includable in the gross estate is the fair market value thereof at the time of the decedent's death. The fair market value is the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. Where the property is sold within a reasonable period after the decedent's death, and it is shown that the selling price reflects the fair market value thereof as of the date of decedent's death, the selling price will be accepted. Neither depreciation nor appreciation in value subsequent to the date of decedent's death will be considered. All relevant facts and elements of value should be considered in every case.

(2) *Real estate.*—The property should not be returned at the local assessed value thereof unless such value represents the fair market value as of the date of decedent's death. (See Art. 12 for manner of listing and describing real estate.)

(3) *Stocks and bonds.*—The value of stock and bonds listed upon a stock exchange should be determined by taking the mean between the highest and lowest quoted selling prices upon the date of death, except where such selling prices do not reflect the fair market value. If the decedent died on a Sunday or holiday, the transaction of the next previous business day will govern. If there were no sales on the date of death, the values should be determined by taking the mean between the highest and lowest sales upon the nearest date either before or after the date of death, if within a reasonable period. If the security is listed upon more than one exchange, the records of the principal exchange should be employed. In valuing listed stocks and bonds the executor should observe care to consult accurate records to obtain values as of the date of death.

If the securities are not listed upon an exchange, but are dealt in actively through brokers, or have an active market, the value should be determined by taking the sale price as of the date of death, or, where there was no sale on that date, of the nearest date thereto upon which a sale was made, if within a reasonable period. Securities in which there are occasional transactions, but which are not dealt in actively enough to clearly establish a fair market value, should be valued upon the basis of the nearest sale to the date of death, provided such sale was made in the normal course of business between a willing buyer and a willing seller and within a reasonable period of the date of the decedent's death. Where quotations are obtained from brokers, or evidence as to the sale of securities is obtained from the officers of the issuing companies, the executor is requested to preserve in his files the letters furnishing such quotations or evidence of sale for inspection when the return is verified by an investigating officer.

Where securities are regularly quoted on a bid and asked basis, and actual sales are not available, the bid price as of the date of death, or the nearest date thereto where not quoted as of the date of death, will be accepted as the value. In the case of corporate or other bonds for which there is no active market, the value is to be determined by giving consideration to the soundness of the security, the interest yield, the date of maturity, and other relevant factors.

Where there is no active market for a particular security (whether listed or unlisted), or where sales thereof made from time to time are greatly disproportionate to the holdings of the decedent, and the executor, in good faith, proceeds within a reasonable time to make a bona fide sale or sales of any such securities, the amount so realized will be accepted as the value. Sales, however, of only a small portion of a large holding, or sales made without a real effort to secure the widest market possible, or sales made merely for the purpose of fixing value, will not be considered as conclusive.

Stock in a close corporation should be valued upon the basis of the company's net worth, earning and dividend-paying capacity, and all other factors having a bearing upon the value of the stock. Complete financial and other data upon which the estate bases its valuation should be submitted in duplicate with the return.

Where as to any particular security conditions of sale or ownership are such that the fair market value, determined as already indicated, would not afford a proper basis for valuation, the Commissioner, on final audit, will establish the value by considering all relevant factors. In any case where the estate contends that the value, if established by the general rules already given, is not the fair market value as of the date of death the evidence upon which it bases its contention should be filed with the return.

The full value of securities pledged to secure a loan should be included in the gross estate. If the decedent had a trading account with a broker, all securities belonging to the decedent and held by the broker at the date of death must be included at their fair market value on that date. Securities purchased on margin for the decedent's account and held by the broker should also be returned at their fair market value on the date of death. The amount of the decedent's indebtedness to the broker or other person with whom securities were pledged will be allowed as a deduction from the gross estate in accordance with Articles 29, 36, and 52. (See Art. 12 for manner of listing and describing stocks and bonds.)

(4) *Interest in business.*—Care should be taken to arrive at an accurate valuation of any business in which the decedent was interested, whether as partner or proprietor. A fair appraisal as of the date of death should be made of all the assets of the business, tangible and intangible, including good will, and the business should be given

a net value equal to the amount which a willing purchaser, whether an individual or corporation, would pay therefor to a willing seller in view of the net value of the assets and the demonstrated earning capacity. Special attention should be given to fixing an adequate figure for the value of the good will of the business in all cases where the decedent has not agreed, for an adequate and full consideration in money or money's worth, that his interest therein shall pass at his death to his surviving partner or partners.

The factors hereinbefore stated relative to the valuation of other property, where applicable, will be considered in determining the valuation of an interest in a business held as proprietor or partner. All evidence bearing upon such valuation should be submitted with the return, including copies of reports in any case where examinations of the business have been made by accountants, engineers, or any technical experts as of or near the date of decedent's death.

(5) *Notes, secured and unsecured.*—The value of notes, whether secured or unsecured, will be presumed to be the amount of unpaid principal, plus accrued interest to the date of decedent's death, unless the executor establishes a lower value, or it is shown that they are worthless. Unless returned at face value, plus accrued interest, it must be shown by satisfactory evidence that the note is worth less than the unpaid amount because of the interest rate, or date of maturity, or other cause, or that it is uncollectible, either in whole or in part, by reason of the insolvency of the party or parties liable, or for other cause, and that the property, if any, pledged or mortgaged as security is insufficient to satisfy it.

(6) *Cash on hand or on deposit.*—The amount of cash belonging to the decedent, either in his possession at the date of death or in the possession of another, should be included, together with such interest, if any, payable thereon at the date of the decedent's death. Bank accounts should be returned in the amount on deposit to the credit of the decedent at the date of death. If checks then outstanding, given in discharge of bona fide, legal obligations of the decedent, incurred for an adequate and full consideration in money or money's worth, and not as transfers coming within the provisions of section 302 (c) or (d), are subsequently honored by the bank and charged to the account, the balance remaining may be returned, provided the payments effected thereby are not claimed as deductions from the gross estate. Interest which the bank agreed to pay upon condition that the money remain on deposit for a period of time which expired subsequent to the decedent's death, should not be included.

(7) *Intangibles.*—Intangibles should be valued in accordance with the rule laid down under subdivision (1) of this article.

(8) *Other property.*—With respect to all other property, excepting household and personal effects, concerning which see subdivision

(9) of this article, the executor should ascertain and return the fair market value thereof as of the date of decedent's death. Livestock, farm machinery, harvested and growing crops should be itemized and the value of each item separately returned. As to property sold subsequent to death see subdivision (1) of this article.

(9) *Household and personal effects.*—All household and personal effects of the decedent should be included at the price which a willing buyer would pay to a willing seller. A room by room itemization is desirable. All the articles should be named specifically, except that a number of articles contained in the same room, none of which has a value in excess of \$50, may be grouped. A separate value should be given for each article named. The executor may furnish, in lieu of an itemized list, a sworn statement, in duplicate, setting forth the aggregate value of the property as appraised by a competent appraiser, or appraisers of recognized standing and ability, or by a dealer or dealers in the class of personalty involved.

If, however, there is included among the household and personal effects, articles having marked artistic or intrinsic value of a total value in excess of \$2,000, such as jewelry, silverware, paintings, etchings, engravings, antiques, books, statuary, vases, oriental rugs, collections of coins and stamps, the appraisal of an expert or experts, under oath, should be filed with the return on Form 706, accompanied by the affidavit, in duplicate, of the executor as to the completeness of the itemized list of such property and of the disinterested character and the qualifications of the appraiser or appraisers.

Where it is desired to effect distribution or sale of any portion of the household or personal effects in advance of an investigation by a special officer of the Bureau of Internal Revenue, as provided in Article 67, information to that effect should be given to the internal revenue agent in charge for the division wherein the decedent was domiciled at the date of his death, or if such household and personal effects were not located in such division, then to the Commissioner. The statement to the internal revenue agent in charge should be accompanied by a verified appraisal of such property and an affidavit of the executor as to the completeness of the list of such property and the qualifications of the appraiser, as already referred to, but such an appraisal and affidavit need not be in duplicate. If a personal inspection by a special officer of the bureau is not deemed necessary, the executor will be so advised. This procedure is designed to facilitate disposition of such property and to obviate future expense and inconvenience to the estate by affording the Commissioner an opportunity to make an investigation should one be deemed necessary prior to sale or distribution. (For location of the offices of the internal revenue agents in charge and the territory embraced in each division, see Appendix.)

Where expert appraisers are employed care should be taken to see that they are reputable and of recognized competency to appraise the particular class of property involved. In the appraisal, books in sets by standard authors should be listed in separate groups. In listing paintings having artistic value, the size, subject, and artist's name should be stated. In the case of oriental rugs, the size, make, and general condition should be given. Sets of silverware should be listed in separate groups. Groups or individual pieces of silverware should be weighed and the weights given in troy ounces. In arriving at the value of silverware, the appraisers should take into consideration its antiquity, utility, desirability, condition, and obsolescence.

(10) *Annuities, life, remainder, and reversionary interests.*—Where the decedent was entitled to receive an annuity of a definite amount during the lifetime of another person, payable at the end of annual periods, its present worth at the time of the decedent's death must be computed upon the basis of the value of a life annuity at the age of the other person. The table marked "A," a part of this subdivision, should be used for this computation. The amount payable annually should be multiplied by the figure in column 2 of the table opposite the number of years in column 1 nearest to the actual age of the other person.

Example: The decedent received under the terms of his father's will an annuity of \$10,000 for the life of his elder brother. The brother at the decedent's death was 40 years 8 months old. By reference to the table the figure in column 2 opposite 41 years, the number nearest to the brother's age, is found to be 14.86102. The present worth of the annuity is therefore \$148,610.20.

Where the decedent was entitled to receive the annuity during a specified number of years, the table marked "B," a part of this subdivision, should be used.

Example: The decedent received under the terms of his father's will an annuity of \$10,000 for a period of 20 years, 15 of which had expired at the decedent's death. By reference to the table it is found that the figure in column 2 opposite 5 years, the unexpired portion of the 20-year period, is 4.45182. The present worth of the annuity is, therefore, \$44,518.20 (4.45182 multiplied by 10,000).

Where the decedent was entitled to receive the entire income of certain property during the life of another person, or for a term of years, and the annual rate of income for a period equal to or exceeding the life expectancy of such other person or such term of years, is fixed or definitely determinable at the time of the decedent's death, then the present worth of decedent's right to such income should be computed as explained above in the case of an annuity.

Example: The decedent's father placed \$100,000 in trust, with directions that it be invested in State and municipal bonds and the

entire income paid to the decedent during the life of his elder brother, who was 41 years old at the decedent's death. Before the decedent's death the money was invested in State and municipal bonds maturing at dates beyond such elder brother's life expectancy, and yielding annually an income of \$5,000. In this case the rate of income is definitely determinable. By reference to the table, it is found that the present worth of an income of \$5,000, dependent upon the life of a person 41 years of age, is \$74,305.10 (14.86102 multiplied by 5,000).

Where the rate of annual income is not determinable, or where the decedent was entitled merely to the personal use of nonincome-bearing property, a hypothetical annuity at a rate of 4 per cent of the value of the property should be made the basis of the calculation.

Example: The decedent died before a fund of \$100,000, of which he was entitled to receive the income during the life of a person 41 years old, had been invested by the trustees. The value of a hypothetical annuity of \$4,000, dependent upon the life of such a person, is indicated by the table to be \$59,444.08 (14.86102 multiplied by 4,000).

Where the decedent had a remainder interest in property subject to the life estate of another, and such interest constituted an asset of his estate, the present worth of the remainder interest at the time of death should be obtained by multiplying the value of the property at the time of death by the figure in column 3 of Table A opposite the number of years nearest to the age of the life tenant. Where the remainder interest is subject to an estate for a term of years Table B should be used.

Example: The decedent was entitled to receive property worth \$50,000 upon the death of his elder brother, to whom the income for life had been bequeathed. The brother at the time of the decedent's death was 31 years old. By reference to the table it is found that the figure in column 3, opposite 31 years, is 0.31262. The present worth of the remainder interest is, therefore, \$15,631.

If the annuity is payable semiannually, quarterly, or at the beginning of the year, or for more than one life, or in any other manner rendering inapplicable Table A or Table B (also a part of this subdivision) the case may be stated to the Commissioner, who will thereupon make the computation and advise the executor thereof. In making such calculations where life interests or remainders upon life interests are involved use will be made of the Actuaries' or Combined Experience Table of Mortality, as extended (that being the basis of Table A), with interest at 4 per centum per annum compounded annually.

TABLE A

Table, single life, 4 per cent, showing the present worth of an annuity, or a life interest, and of a reversionary interest

1	2	3	1	2	3
Age	Annuity, or present value of \$1 due at the end of each year during the life of a person of specified age	Reversion, or present value of \$1 due at the end of the year of death of a person of specified age	Age	Annuity, or present value of \$1 due at the end of each year during the life of a person of specified age	Reversion, or present value of \$1 due at the end of the year of death of a person of specified age
	<i>Annuity</i>	<i>Reversion</i>		<i>Annuity</i>	<i>Reversion</i>
0	\$14.72829	\$0.39507	51	\$12.17919	\$0.49311
1	17.30771	.29586	52	11.88408	.50446
2	18.69578	.24247	53	11.58531	.51595
3	19.15901	.22465	54	11.28325	.52757
4	19.41226	.21491	55	10.97789	.53931
5	19.55301	.20950	56	10.66982	.55116
6	19.61731	.20703	57	10.35931	.56310
7	19.62502	.20673	58	10.04630	.57514
8	19.61097	.20727	59	9.73131	.58726
9	19.53413	.21022	60	9.41474	.59943
10	19.45359	.21332	61	9.09765	.61163
11	19.36943	.21656	62	8.78052	.62383
12	19.28184	.21993	63	8.46412	.63600
13	19.19065	.22344	64	8.14888	.64812
14	19.09590	.22708	65	7.83552	.66017
15	18.99764	.23086	66	7.52476	.67212
16	18.89569	.23478	67	7.21699	.68397
17	18.79010	.23884	68	6.91298	.69565
18	18.68070	.24305	69	6.61301	.70719
19	18.56751	.24740	70	6.31716	.71857
20	18.45038	.25191	71	6.02612	.72976
21	18.32932	.25656	72	5.74003	.74077
22	18.20416	.26138	73	5.45928	.75157
23	18.07471	.26636	74	5.18402	.76215
24	17.94097	.27150	75	4.91463	.77251
25	17.80274	.27682	76	4.65125	.78264
26	17.65984	.28231	77	4.39383	.79254
27	17.51224	.28799	78	4.14286	.80220
28	17.35968	.29386	79	3.89858	.81159
29	17.20225	.29991	80	3.66071	.82074
30	17.03961	.30617	81	3.42900	.82965
31	16.87176	.31262	82	3.20258	.83836
32	16.69846	.31929	83	2.98024	.84691
33	16.51964	.32617	84	2.76106	.85534
34	16.33503	.33327	85	2.54366	.86371
35	16.14437	.34060	86	2.32795	.87200
36	15.94755	.34817	87	2.11384	.88024
37	15.74427	.35599	88	1.90115	.88842
38	15.53421	.36407	89	1.69107	.89650
39	15.31722	.37241	90	1.48540	.90441
40	15.09295	.38104	91	1.28432	.91214
41	14.86102	.38996	92	1.09024	.91961
42	14.62122	.39918	93	.90647	.92667
43	14.37356	.40871	94	.73687	.93320
44	14.11860	.41852	95	.58435	.93906
45	13.85713	.42857	96	.46182	.94378
46	13.58958	.43886	97	.36698	.94742
47	13.31698	.44935	98	.24038	.95229
48	13.03942	.46002	99	.00000	.96154
49	12.75716	.47088			
50	12.47032	.48191			

TABLE B

Table showing the present worth at 4 per cent of an annuity for a term-certain, and of a reversionary interest postponed for a term-certain

1	2	3	1	2	3
Number of years	Present worth of an annuity of \$1, payable at the end of each year, for a certain number of years	Present worth of \$1, payable at the end of a certain number of years	Number of years	Present worth of an annuity of \$1, payable at the end of each year, for a certain number of years	Present worth of \$1, payable at the end of a certain number of years
	<i>Annuity</i>	<i>Reversion</i>		<i>Annuity</i>	<i>Reversion</i>
1	\$0. 96154	\$0. 961538	16	\$11. 65229	\$0. 533908
2	1. 88609	. 924556	17	12. 16567	. 513373
3	2. 77509	. 888996	18	12. 65929	. 493628
4	3. 62989	. 854804	19	13. 13394	. 474642
5	4. 45182	. 821927	20	13. 59032	. 456387
6	5. 24214	. 790314	21	14. 02916	. 438834
7	6. 00205	. 759918	22	14. 45111	. 421955
8	6. 73274	. 730690	23	14. 85684	. 405726
9	7. 43533	. 702587	24	15. 24696	. 390121
10	8. 11089	. 675564	25	15. 62208	. 375117
11	8. 76047	. 649581	26	15. 98277	. 360689
12	9. 38507	. 624597	27	16. 32958	. 346816
13	9. 98565	. 600574	28	16. 66306	. 333477
14	10. 56312	. 577475	29	16. 98371	. 320651
15	11. 11839	. 555265	30	17. 29203	. 308319

GROSS ESTATE—DOWER AND CURTESY

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—* * *

(b) To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower, curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy; * * *

ART. 14. **Dower and curtesy.**—This provision includes dower and curtesy and all interests created by statute in lieu thereof, although the estate or interest so created is different in character. The effect of the provision is to require the inclusion of the full value of the property, without deduction of the value of the interest of the surviving husband or wife. This provision does not apply to the estate of any decedent dying after September 8, 1916, and prior to 6.55 p. m., February 24, 1919 (the effective date of Title IV of the Revenue Act of 1918), unless the property has its situs in a jurisdiction wherein dower, curtesy, or the statutory interest in lieu thereof, is subject to the payment of charges against the estate, the expenses of its administration, and is subject to distribution as part of the estate, or unless there has been an election to take property devised or bequeathed in lieu of dower, curtesy, or such statutory interest, and the

property so taken has its situs in a jurisdiction by the laws of which it is subject to the payment of such charges and expenses, and to distribution as a part of the estate.

GROSS ESTATE—TRANSFERS BY DECEDENT IN HIS LIFETIME

·SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated— * * *

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Where within two years prior to his death but after the enactment of this Act and without such a consideration the decedent has made a transfer or transfers, by trust or otherwise, of any of his property, or an interest therein, not admitted or shown to have been made in contemplation of or intended to take effect in possession or enjoyment at or after his death, and the value or aggregate value, at the time of such death, of the property or interest so transferred to any one person is in excess of \$5,000, then, to the extent of such excess, such transfer or transfers shall be deemed and held to have been made in contemplation of death within the meaning of this title. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death but prior to the enactment of this Act, without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;

(d) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. The relinquishment of any such power, not admitted or shown to have been in contemplation of the decedent's death, made within two years prior to his death but after the enactment of this Act without such a consideration and affecting the interest or interests (whether arising from one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggregate value, at the time of such death, in excess of \$5,000, then, to the extent of such excess, such relinquishment or relinquishments shall be deemed and held to have been made in contemplation of death within the meaning of this title; * * *

(i) If any one of the transfers, trusts, interests, rights, or powers enumerated and described in subdivisions (c), (d), and (f) of this section is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be

included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

ART. 15. Transfers during life.—Except bona fide sales for an adequate and full consideration in money or money's worth, all transfers made by the decedent subsequent to September 8, 1916, are taxable if made in contemplation of or intended to take effect in possession or enjoyment at or after his death. If the enjoyment of the property or the interest transferred (whether the property or the interest was transferred by the decedent before or after passage of the Revenue Act of 1916) was subject at the date of the decedent's death to change by the exercise of any power to alter, amend, or revoke, or if any such power was relinquished by the decedent subsequent to the effective date of Part I, Title III, of the Revenue Act of 1924, in contemplation of death, the entire value of the property, or the interest transferred, as of the date of decedent's death must be included in the gross estate unless the transfer constituted a bona fide sale for an adequate and full consideration in money or money's worth. To constitute a bona fide sale for an adequate and full consideration in money or money's worth it must have been made in good faith, and the price must have been an adequate and full equivalent, and reducible to a money value. Where the price was less than an adequate and full equivalent only the excess of the fair market value of the property, as of the date of the decedent's death, over the price received by the decedent should be included in the gross estate.

Where a transfer, by trust or otherwise, was made by a written instrument, duplicate copies thereof should be filed with the return. If of public record, one of the copies should be certified; if not of record, one copy should be verified. Where the decedent was a non-resident, only one copy, certified or verified, need be filed.

TRANSFERS IN CONTEMPLATION OF DEATH

ART. 16. Nature of transfer.—The words "in contemplation of death" do not mean, on the one hand, a general expectation of death such as all persons entertain, nor, on the other, is the meaning limited to an expectation of immediate death. A transfer, however, is made in contemplation of death wherever the person making it is influenced to do so by such an expectation of death, arising from bodily or mental conditions, as prompts persons to dispose of their property to those whom they deem proper objects of their bounty. Such a transfer is taxable, although the decedent parts absolutely and immediately with his title to and possession and enjoyment of the property.

Transfers made by the decedent in his lifetime, other than transfers intended to take effect in possession or enjoyment at or after death (see Art. 17), excepting bona fide sales for an adequate and full consideration in money or money's worth, must be returned for tax, or disclosed in the return, as follows (see also Art. 20):

(1) *Transfers made in contemplation of death.*—The executor must return for tax the value, as of the date of the decedent's death, of all property transferred by the decedent subsequent to September 8, 1916, in contemplation of death.

(2) *Transfers not admitted to have been made in contemplation of death.*—

(a) The executor is required to disclose in the return all transfers made by the decedent subsequent to September 8, 1916, of an amount or value of \$5,000, or more. Any such transfer made within two years of the decedent's death, but before the effective date of the Revenue Act of 1926, and constituting a material part of decedent's property and in the nature of a final disposition or distribution thereof, is deemed to have been made in contemplation of death within the meaning of the statute. Where the executor contends that the transfer was not made in contemplation of death he must file with the return sworn statements, in duplicate, of all the material facts, including, among other things, the decedent's motive in making the transfers and his mental and physical condition at that time, and one copy of the death certificate.

(b) The executor is required to return for tax all transfers made by the decedent within two years prior to his death, but after the effective date of the Revenue Act of 1926, to the extent that the value thereof to any one person is in excess of \$5,000, even though the transfer is not admitted to have been made in contemplation of death. The entire value of the transfers should be disclosed in the return. Example: The decedent died April 15, 1926, having transferred on March 1, 1926, a farm to his son A, and certain shares of stock to his son, B, the values as of date of death, being \$20,000 and \$30,000, respectively. Both transfers should be listed on the return and the entire value of the transfers disclosed but the taxable portion of the value of the transfers will be \$15,000, and \$25,000, respectively. This example is applicable only in case the transfer is not admitted or shown to have been made in contemplation of death.

The fact that a gift was made as an advancement, to be taken into account upon the final distribution of the decedent's estate, is not, in and of itself, determinative of its taxability.

TRANSFERS INTENDED TO TAKE EFFECT IN POSSESSION OR ENJOYMENT
AT OR AFTER DEATH

ART. 17. General.—All transfers made by the decedent subsequent to September 8, 1916, other than bona fide sales for an adequate and full consideration in money or money's worth, which were intended to take effect in possession or enjoyment at or after his death, are taxable, and the value, as of the date of the decedent's death, of property or interest so transferred must be returned as a part of the gross estate.

ART. 18. Reservation of income or an annuity.—A transfer, not amounting to a bona fide sale for an adequate and full consideration in money or money's worth, is taxable where the decedent reserved to himself during life the entire income of the property transferred. In such a case the transfer of the principal takes effect in possession and enjoyment at the death of the decedent, and the value of the entire property should be included in the gross estate.

Where the decedent reserved only a portion of the income, only a corresponding proportion of the value of the property should be included in the gross estate, unless, however, the possession or enjoyment of the remaining portion of the transferred property, or a part thereof, was postponed until at or after the decedent's death, in which case there should also be included in the gross estate such remaining portion or part thereof, as the case may be. Thus, for example, if the reservation was one-half of the income then one-half of the value of the transferred property should be included, and if, in addition to such reservation, it was intended by the decedent that possession or enjoyment of the remaining portion of the property should be postponed until at or after his death, then the value of the entire property should be included.

The rule would be the same, as far as concerns the proportion of the property to be included in the gross estate, if an annuity were reserved, whether out of the property transferred or the income therefrom.

Where the decedent reserved out of the property transferred a definite annuity and the income from the property was indefinite, or indeterminable, or the property was nonincome bearing, there should be included in the gross estate that portion of the value of the property transferred (not to exceed the entire value as of the date of the decedent's death) equal to the capitalization of the annuity at 4 per cent. Example: The decedent transferred a farm

valued at \$35,000 to his son, the income from the farm being uncertain and indefinite, the son agreeing to pay to the decedent \$1,000 per annum during the decedent's lifetime. Capitalizing the annuity of \$1,000 at 4 per cent a fund which will yield the annuity is determined to be of the value of \$25,000. There should be included in the gross estate on account of the transfer \$25,000. If the value of the farm was \$20,000 the amount to be included is \$20,000.

Where in any case the transfer was made in contemplation of death, the value of the transferred property, as of the date of the decedent's death, should be included in the gross estate whether or not the transfer was one intended to take effect in possession or enjoyment at or after death. (See Art. 16.)

Where there was no reservation of income or an annuity but it was intended that possession or enjoyment of the transferred property, or a portion thereof, should be postponed until at or after decedent's death, then the value of the entire property or of such portion, as the case may be, should be included in the gross estate. Thus a gift of the principal intended to take effect either in possession or enjoyment at or after the decedent's death is taxable, although the income or annuity was payable during the decedent's life to some one other than himself. Example: The decedent transferred property to his son, the latter to receive the income during the decedent's life or agreeing to pay the income to his mother during the decedent's life. The transfer to the son in either case is taxable.

TRANSFERS—WHERE ENJOYMENT SUBJECT TO CHANGE THROUGH POWER TO ALTER, AMEND, OR REVOKE; OR WHERE SUCH POWER IS RELINQUISHED IN CONTEMPLATION OF DEATH

ART. 19. Power to change enjoyment.—The value of property transferred, other than by a bona fide sale for an adequate and full consideration in money or money's worth, constitutes a part of the gross estate if at the time of the decedent's death the enjoyment thereof was subject to any change through a power, exercisable either by the decedent alone or in conjunction with any person, to alter, amend, or revoke.

ART. 20. Power relinquished in contemplation of death.—Where property was transferred by the decedent, who reserved a power to alter, amend, or revoke the transfer, and such power was relinquished in contemplation of death, the value of the property should be included in the gross estate. (See also Art. 16.) The relinquishment of any such power not admitted or shown to have been in contemplation of death is deemed and held to have been made in contemplation of death within the meaning of the statute if such power was reli-

quished within two years prior to the decedent's death, but after the enactment of the Revenue Act of 1926, without an adequate and full consideration in money or money's worth to the extent that the value of the interest of any one beneficiary affected at the time of the decedent's death exceeded \$5,000 and such excess should be included in the gross estate.

TRANSFERS—VALUATION

ART. 21. Valuation of property transferred.—The value must be determined as of the date of the decedent's death. (See Art. 13.) Where the transferee makes additions to the property, or betterments, the enhanced value of the property at that date, due to such additions or betterments, is not to be included.

GROSS ESTATE—PROPERTY HELD JOINTLY

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated— * * *

(e) To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: *Provided*, That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further*, That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants; * * *

ART. 22. Property held jointly or as tenants by the entirety.—The foregoing provisions of the statute extend only to joint ownerships based on the right of survivorship and created subsequent to September 8, 1916. The statute specifically reaches property held jointly by the decedent and any other person or persons, or by the decedent and spouse as tenants by the entirety, or

deposited with any person or institution carrying on a banking business in the name of the decedent and any other person and payable to either or the survivor, provided the decedent contributed toward the acquisition of the property so held or deposited, or acquired it by gift, bequest, devise, or inheritance. The statute applies to all classes of property, whether real or personal, where the survivor takes the entire interest therein by right of survivorship, and no interest therein forms a part of the decedent's estate for purposes of administration. It does not include property held by the decedent and any other person or persons as tenants in common.

ART. 23. Taxable portion.—The entire value of such property is *prima facie* a part of the decedent's gross estate, but as it is not the intent of the statute that there should be so included a greater part or proportion thereof than is represented by an outlay of funds, which, in the first instance, were decedent's own, or more than a fractional part equal to that of the other joint owner where neither had parted with any consideration in its acquirement, facts, which in a given case bring it within any one of the exceptions enumerated in the statute, may be submitted by the executor.

Whether the value of the entire property, or only a part, or none of it, enters into the make-up of the gross estate depends upon the following considerations: (1) So much of the property (whether the whole, or a part thereof) as originally belonged to the other joint owner, and which at no time in the past had been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth, forms no part of the decedent's gross estate. (2) Where the facts are otherwise the same as in (1), but the decedent paid to such other joint owner a consideration for the interest by him (the decedent) acquired in the property, then such portion of the value of the property, proportionate to the consideration so paid, constitutes a part of the gross estate. (3) Where the property, or a part thereof, or a part of the consideration wherewith it was acquired, had at any time been acquired by the other joint owner from the decedent as a gift, or for less than an adequate and full consideration in money or money's worth, then such portion of the value of the entire property, proportionate to the consideration, if any, which in the first instance was paid from such other joint owner's own funds, forms no part of the gross estate. (4) Where the property was acquired by the decedent and his or her surviving spouse as tenants by the entirety by gift, will, or inheritance, then but one-half of the value of the property becomes a part of the gross estate. (5) Where acquired by the decedent and the other joint owner as joint tenants by gift, will, or inheritance, and their interests are not otherwise specified or fixed by law, then one-half only of the value of the property is a part of the gross

estate; or, where so acquired by the decedent and two or more persons, and the interests of the several joint tenants are not otherwise determinable, then the decedent and the other joint tenants surviving him shall each be deemed the owner of an equal fractional part, and the value of one only of such fractional parts is to be included in the gross estate.

The following are given as illustrative: (a) Where the decedent furnished the entire purchase price, the entire property should be included in the gross estate; (b) where the decedent furnished a part only of the purchase price, only a corresponding portion of the property should be so included; (c) where the decedent, prior to the acquisition of the property by himself and the other joint owner, gave the latter a sum of money which later constituted such other joint owner's entire contribution to the purchase price of the property, the entire value of the property should be included; (d) where the other joint owner, prior to the acquirement of the property, received from the decedent, for less than an adequate and full consideration in money or money's worth, property which thereafter became, as such, or in a converted form, part of the purchase price of the property, the value of the property to be included is to be reduced proportionately to the consideration furnished by the other joint owner in the original transaction; (e) where the decedent furnished no part of the purchase price, no part of the property should be included; (f) where the decedent and spouse acquired the property by will as tenants by the entirety, one-half of the value of the property should be included.

GROSS ESTATE—PROPERTY PASSING UNDER POWER OF APPOINTMENT

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—* * *

(f) To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth; and * * *

(i) If any one of the transfers, trusts, interests, rights, or powers, enumerated and described in subdivisions (c), (d), and (f) of this section is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

ART. 24. General rule.—The value of all property passing under a general power of appointment must be included in the gross estate of the person exercising the power (known as the donee, or appointor) where the power is exercised by will. It should also be so included when the power is exercised by deed or other instrument executed in contemplation of, or intended to take effect in possession or enjoyment at or after, the death of the donee of the power. The statute, however, does not require inclusion within the gross estate of the value of the appointed property in the case of a bona fide sale thereof by the donee of the power for an adequate and full consideration in money or money's worth.

If the power is exercised for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there should be included in the gross estate only the excess of the fair market value, at the time of decedent's death, of the property passing under the power over the value of the consideration received by the decedent.

Only property passing under a general power should be included. Ordinarily a general power is one to appoint to any person or persons in the discretion of the donee of the power. Where the donee is required to appoint to a specified person or class of persons, the property should not be included in his gross estate. Where the decedent died prior to the effective date of the Revenue Act of 1918, the value of the appointed property is not to be so included. Duplicate copies of the instrument granting the power and of the instrument by which the power was exercised, one of each to be certified or verified, must be filed with Form 706 in all cases, unless the decedent was a nonresident, in which case only one copy of each instrument, certified or verified, is required.

GROSS ESTATE—INSURANCE

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated— * * *

(g) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over \$40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life. * * *

ART. 25. Taxable insurance.—The statute provides for the inclusion in the gross estate of insurance taken out by the decedent upon his own life, as follows: (a) All insurance receivable by, or for the benefit of, the estate; (b) all other insurance to the extent that it exceeds in the aggregate \$40,000.

The term "insurance" refers to life insurance of every description, including death benefits paid by fraternal beneficial societies, operating under the lodge system. Insurance is deemed to be taken out by the decedent in all cases where he pays all the premiums, either directly or indirectly, whether or not he makes the application. On the other hand, the insurance is not deemed to be taken out by the decedent, even though the application is made by him, where all the premiums are actually paid by the beneficiary. Where a portion of the premiums were paid by the beneficiary and the remaining portion by the decedent the insurance will be deemed to have been taken out by the latter in the proportion that the premiums paid by him bear to the total of premiums paid.

ART. 26. Insurance in favor of the estate.—The provision requiring the inclusion in the gross estate of all insurance receivable by the executor, without any deduction, applies to policies made payable to the decedent's estate or his executor or administrator, and all insurance which is in fact receivable by, or for the benefit of, the estate. It includes insurance taken out to provide funds to meet the estate tax, and any other taxes or charges which are enforceable against the estate. The manner in which the policy is drawn is immaterial so long as there is an obligation, legally binding upon the beneficiary, to use the proceeds in payment of such taxes or charges. Where the decedent took out insurance in favor of another person or corporation as collateral security for a loan or other accommodation, and either directly or indirectly paid the premiums thereon, the insurance is deemed to be receivable for the benefit of the estate. The amount of the loan outstanding at decedent's death, with interest accrued thereon to that date, will be deductible in determining the net estate. (See Art. 29.)

ART. 27. Insurance receivable by other beneficiaries.—All insurance in excess of \$40,000 receivable by beneficiaries other than the estate, regardless of when taken out, must be included in the gross estate where the decedent during his life retained legal incidents of ownership in the policies of insurance, as, for example, a power to change the beneficiary, to surrender or cancel the policies, to assign them, to revoke an assignment of them, to pledge them for loans, or to dispose otherwise of them and their proceeds for his own benefit, etc.

However, irrespective of the retention of such legal incidents of ownership, all insurance in excess of \$40,000 receivable by beneficiaries other than the estate must be included in the gross estate (1) of any decedent dying after the enactment of the Revenue Act of 1924, where such insurance was taken out, or the beneficiary receiving the proceeds was named, after the enactment of the Revenue Act of 1918, and (2) of any decedent dying after the passage of the Revenue Act of 1918, but before the effective date of Title III of the Revenue Act

of 1924, where such insurance was taken out, or the beneficiary receiving the proceeds was named, after the enactment of the particular revenue act in force and effect at the time of such a decedent's death.

The estate is entitled to only one exemption of \$40,000 upon insurance receivable by beneficiaries other than the estate. For example, if the decedent left life insurance payable to three such beneficiaries in amounts of \$10,000, \$40,000, and \$50,000 (total, \$100,000), the full amount should be listed on the return and therefrom subtracted the \$40,000 exemption as provided in Schedule C of Form 706. The word "beneficiaries," as used in reference to the \$40,000 exemption, means persons entitled to the actual enjoyment of the insurance money.

ART. 28. Valuation of insurance.—The amount to be returned where the policy is payable to or for the benefit of the estate is the amount receivable. Where the proceeds of a policy are payable to a beneficiary other than to or for the benefit of the estate, and all the premiums were paid by the decedent, the amount to be listed on Schedule C of the return is the full amount receivable, but where the proceeds are so payable and only a portion of the premiums were paid by the decedent, the amount to be listed on such schedule is that proportion of the insurance receivable which the premiums paid by the decedent bear to the total premiums paid. In cases where the proceeds of a policy are made payable to the beneficiary in the form of an annuity for life or for a term of years, the present worth of the annuity at the time of death should be included in the gross estate. For the method of computing the value of such an annuity, see Article 13, subdivision (10). Where the insurance contract gives the right to receive a fixed sum of money in lieu of an annuity, or other optional settlement, this fixed sum represents the value of the insurance for the purpose of the tax.

GROSS ESTATE—RETROACTIVE PROVISIONS

SEC. 302. * * * (h) Except as otherwise specifically provided therein subdivisions (b), (c), (d), (e), (f), and (g) of this section shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after the enactment of this Act.

DEDUCTIONS—ESTATES OF RESIDENTS ADMINISTRATION EXPENSES, CLAIMS, ETC.

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages upon, or any indebtedness

in respect to, property (except, in the case of a resident decedent, where such property is not situated in the United States), to the extent that such claims, mortgages, or indebtedness were incurred or contracted bona fide and for an adequate and full consideration in money or money's worth, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, or from theft, when such losses are not compensated for by insurance or otherwise, and such amounts reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or any estate, succession, legacy, or inheritance taxes; * * *

ART. 29. Deduction of claims, expenses, etc.—In order to be deductible under the foregoing provision of the statute, the item must fall within one of the several classes of deductions specifically enumerated therein, and must also, except in the case of deductible losses during the administration of the estate, be one the payment of which out of the estate is authorized by the laws of the jurisdiction under which the estate is being administered. Unless both of these conditions exist the item is not deductible. Where the item is not one of those described it is not deductible merely because payment is allowed by the local law. Where the amount which may be expended for the particular purpose is limited by the local law no deduction in excess of such limitation is permissible. Where the amount sought as a deduction is a claim against the estate, or an unpaid mortgage, it is deductible to the extent only that liability therefor was incurred or contracted bona fide and for an adequate and full consideration in money or money's worth. An item may be entered on the return for deduction though the exact amount thereof is not then known, provided it is ascertainable with reasonable certainty, and will be paid. No deduction may be taken upon the basis of a vague or uncertain estimate. In the event an uncertain or contingent liability was undetermined at the time of final audit of the return by the Commissioner, and, as a consequence, deduction was not allowed therefor in such audit, and subsequently the liability and the amount thereof becomes fixed and determined, relief may be sought as provided by Articles 76 and 99.

ART. 30. Effect of court decree.—The decision of a local court as to the amount of a claim or administration expense will ordinarily be accepted where the court passes upon the facts upon which deductibility depends. Where the court does not pass upon such facts its decree will, of course, not be followed. For example, where the question before the court is whether a claim should be allowed, the decree allowing it will ordinarily be accepted as establishing the

validity and amount of the claim. The decree will not necessarily be accepted even where it purports to decide the facts upon which deductibility depends. It must appear that the court actually passed upon the merits of the case. This will be presumed in all cases where there is an active and genuine contest. Where the result reached appears to be unreasonable, this is some evidence that there was not such a contest, but it may be rebutted by proof to the contrary. Where the decree was rendered by consent, it will be accepted, provided the consent was a bona fide recognition of the validity of the claim—not a mere cloak for a gift—and was accepted by the court as satisfactory evidence upon the merits. It will be presumed that the consent was of this character, and was so accepted, where given by all parties having an interest adverse to the claimant. The decree will not be accepted where it is at variance with the law of the State; as, for example, an allowance made to an executor in excess of that prescribed by statute.

ART. 31. Funeral expenses.—An executor may deduct such amounts for funeral expenses as are actually expended by him and, under the laws of the local jurisdiction, are payable out of the decedent's estate. A reasonable expenditure by the executor for a tombstone, monument, mausoleum, or for a burial lot, either for the decedent or his family, may be deducted under this heading, provided such an expenditure is allowable by the local law. Included in funeral expenses is the cost of transportation of the person bringing the body to the place of burial.

ART. 32. Administration expenses.—The amounts deductible from the gross estate as "administration expenses" are such expenses as are actually and necessarily incurred in the administration of the estate; that is, in the collection of assets, payment of debts, and distribution among the persons entitled. The expenses contemplated in the law are such only as attend the settlement of an estate by the legal representative preliminary to the transfer of the property to individual beneficiaries or to a trustee, whether such trustee is the executor or some other person. Expenditures not essential to the proper settlement of the estate, but incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions. Administration expenses include (1) executor's commissions; (2) attorney's fees; (3) miscellaneous expenses. Each of these classes is considered separately in Articles 33 to 35, inclusive.

ART. 33. Executor's commissions.—The executor or administrator, in filing the return, may deduct his commissions in such an amount as has actually been paid or which at that time it is reasonably expected will be paid, but no deduction may be taken if no commissions are to be collected. Where the amount of the commissions

has not been fixed by decree of the proper court, the deduction will be allowed on the final audit of the return provided: (1) That the Commissioner is reasonably satisfied that the commissions claimed will be paid; (2) that the amount entered as a deduction is within the amount allowable by the laws of the jurisdiction wherein the estate is being administered; and (3) that it is in accordance with the usually accepted practice in said jurisdiction in estates of similar size and character. Where the commissions claimed have not been awarded by the proper court the Commissioner on final audit may disallow the deduction in part or in whole, as the circumstances in his judgment justify, subject to such future adjustment as the facts may later require. If the deduction is allowed in advance of payment and payment is thereafter waived, it shall be the duty of the executor to notify the Commissioner and pay the tax resulting therefrom, together with interest. Executors should note that the commissions received as compensation for their services constitute taxable income and that the amounts received or receivable by them as such compensation are cross-referenced for income-tax purposes.

A bequest or devise to the executor in lieu of commissions is not deductible. Where, however, the decedent fixed by his will the compensation payable to the executor for services to be rendered in the administration of the estate, deduction may be taken to the extent that the amount so fixed does not exceed the compensation allowable by the local law or practice.

Amounts paid as trustees' commissions do not constitute expenses of administration and are not deductible, whether received by the executor acting in the capacity of a trustee or by a separate trustee as such.

ART. 34. Attorney's fees.—The executor or administrator, in filing the return, may deduct such an amount as attorney's fees as have actually been paid or which at that time it is reasonably expected will be paid. If on the final audit of a return the fees claimed have not been awarded by the proper court and paid, the deduction will be allowed, provided the Commissioner is reasonably satisfied that the amount claimed will be paid and that it does not exceed a reasonable remuneration for the services rendered, taking into account the size and character of the estate and the local law and practice. Where the attorney's fees have not been paid at the time of the final audit of the return the Commissioner may disallow such part, or all, of the deduction as the circumstances may warrant, subject to such future adjustment as the facts may require.

Attorney's fees incident to litigation instituted by the beneficiaries as to their respective interests do not constitute a proper deduction, inasmuch as expenses of this character are properly charges against

the beneficiaries personally and are not administration expenses as contemplated by the statute.

ART. 35. Miscellaneous administration expenses.—This includes such expenses as court costs, surrogates' fees, accountants' fees, appraisers' fees, clerk hire, etc. Expenses necessarily incurred in preserving and distributing the estate are deductible, including the cost of storing or maintaining property of the estate, where it is impossible to effect immediate distribution to the beneficiaries. Expenses for preserving and caring for the property may not include additions or improvements; nor will such expenses be allowed for a longer period than the executor is required to retain the property. A brokerage fee for selling property of the estate is deductible where the sale is necessary in order to pay the decedent's debts, the expenses of administration, or to effect distribution. Other expenses attending the sale are deductible, such as the fees of an auctioneer, where it is reasonably necessary to employ one.

ART. 36. Claims against the estate.—The amounts that may be deducted under this heading are such only as represent personal obligations of the decedent existing at the time of his death, whether then matured or not, but only to the extent that the liability therefor was incurred or contracted bona fide and for an adequate and full consideration in money or money's worth. Only claims enforceable against the estate may be deducted. A pledge or a subscription evidenced by a promissory note or otherwise, even though enforceable against the estate, is deductible only to the extent such pledge or subscription was made for an adequate and full consideration in cash or its equivalent received therefor by the decedent.

ART. 37. Taxes.—The deduction of property taxes upon realty and personalty is governed by the following provisions:

(1) Where such taxes became a personal obligation of the decedent in his lifetime, the entire amount thereof is deductible. (See Art. 29.)

(2) Where assessed during the administration of the estate, and the taxes are a proper administration expense, deduction of the entire amount may be taken. (See Arts. 32 and 35.)

Federal taxes upon income received during the decedent's lifetime are deductible, but taxes upon income received after death are not deductible. No estate, succession, legacy, or inheritance tax is deductible.

ART. 38. Unpaid mortgages.—The full amount of unpaid mortgages upon, or any indebtedness in respect to, property included in the gross estate may be deducted, including interest which had accrued at the time of death, whether payable at that time or not, but only to the extent that the liability for such mortgages or indebtedness

was incurred or contracted bona fide and for an adequate and full consideration in money or money's worth. The full value of the real estate, without any deduction for mortgages, must be returned as part of the gross estate. Real property situated outside the United States is not a part of the gross estate of a resident decedent. Hence no deduction may be taken of any mortgage upon, or any indebtedness in respect to, such property when owned by a resident decedent.

ART. 39. Losses from casualty or theft.—There may be deducted under this heading losses incurred during the settlement of the estate arising from fires, storms, shipwrecks, or other casualty, or from theft, when such losses are not compensated for by insurance or otherwise. If the loss is partly compensated, the excess of the loss over such compensation may be deducted. Losses not of the nature described are not deductible. In order to be deductible a loss must occur during the settlement of the estate. Where a loss with respect to an asset occurs after distribution thereof to the distributee it may not be deducted.

ART. 40. Support of dependents.—The support during the settlement of the estate of dependents of the decedent is deductible, but pursuant to the following rules:

(1) In order to be deductible, the allowance must be authorized by the laws of the jurisdiction in which the estate is being administered, and not in excess of what is reasonably required.

(2) The allowance for which deduction may be made is limited to support during the settlement of the estate. Any allowance for a more extended period is not deductible.

(3) There must be an actual disbursement from the estate to the dependents, but after payment has been made the right of deduction is not affected by the fact that the dependents do not expend the entire amount for their support during the settlement of the estate.

DEDUCTIONS—PROPERTY PREVIOUSLY TAXED

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate— * * *

(2) An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from such donor by gift or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This

deduction shall be allowed only where a gift tax imposed under the Revenue Act of 1924, or an estate tax imposed under this or any prior Act of Congress was paid by or on behalf of the donor or the estate of such prior decedent as the case may be, and only in the amount of the value placed by the Commissioner on such property in determining value of the gift or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate and not deducted under paragraph (1) or (3) of this subdivision; * * *

ART. 41. Deduction of the value of transfers previously taxed.—Where there is included in the decedent's gross estate the value of property received by him by gift from any person within five years prior to his death, or received by gift, bequest, devise, or inheritance from any person who died within five years prior to his death, or the value of property acquired in exchange for property so received, the statute authorizes a deduction in behalf thereof, subject to the following conditions and limitations, namely:

(1) The property respecting which the deduction is sought must have been received by the decedent as a gift within five years of the date of his death, or received by him by gift, bequest, devise, or inheritance from a prior decedent who died within five years of the date of the decedent's death.

(2) The property must be identified either as the same which the decedent so received or acquired in exchange therefor.

(3) The property must have formed a part of the gross estate, situated in the United States, of such prior decedent, or have been included in the total amount of gifts of a donor.

(4) An estate tax by or on behalf of the estate of such prior decedent, or a gift tax by or on behalf of the donor, must have actually been paid (the mere filing of a return for such estate or donor not being sufficient).

(5) The property, or that acquired in exchange therefor, in so far as it constitutes a part of the decedent's gross estate, is, for the purpose of inclusion therein, to be valued as of the date of the decedent's death.

(6) The deduction, however, is limited to the value which the Commissioner placed on the property in determining the value of the gross estate of the prior decedent or the total amount of gifts of the donor.

(7) The deduction is also limited to the extent that the value of the property, or that acquired in exchange therefor, is included in the decedent's gross estate. (See examples following the next paragraph.)

(8) The deduction is further limited to the extent that the value of the property, or of that so acquired in exchange, is not deducted under paragraphs (1) or (3) of the subdivision (a) of section 303.

Example: The decedent's father died January 1, 1922. Included in his gross estate was a tract of land comprising 200 acres upon which the Commissioner placed a value for estate tax purposes of \$20,000. The tax on the father's estate was paid. The son, having inherited the tract from his father, sold 100 acres thereof on January 1, 1923, for \$20,000, and commingled the proceeds with his other funds. On the son's death, which occurred January 1, 1924, the remaining one-half of the land was returned as a part of his gross estate at \$20,000, which was the fair market value thereof as of the date of his death. Since only one-half of the tract was included in the son's gross estate, the deduction is limited to one-half of the value placed by the Commissioner upon the whole tract when determining the value of the father's gross estate, or \$10,000.

Example: On July 2, 1924, A transferred by gift to B bonds of the then value of \$100,000. In due course a gift-tax return was filed by A and the tax paid on that basis. On August 1, 1924, B died, on which date the bonds were worth \$80,000. In filing the return for the estate of B, the bonds were listed at a value of \$80,000. Since the value of the bonds, as of the date of death of B, was \$80,000, the deduction is limited to that amount.

Under the provisions of the Revenue Act of 1918 the deduction was available only where the prior decedent died after October 3, 1917, the date of the passage of the Revenue Act of 1917, and the decedent's death occurred subsequent to the effective date of the Revenue Act of 1918. But under the provisions of the Revenue Act of 1921 the right to such deduction is made available to the estates of all decedents dying since September 8, 1916. Where, under the provisions of the Revenue Act of 1918, or any prior Act of Congress imposing an estate tax, the deduction was not available, the right thereto is to be determined in accordance with the provisions of paragraph (2) of subdivision (a) of section 403 of the Revenue Act of 1921, but where available under the Revenue Act of 1918, it is governed by paragraph (2) of subdivision (a) of section 403 of that Act. Section 1100 (c) of the Revenue Act of 1924 provides that the retroactive benefit of section 403 of the Revenue Act of 1921 is not lost by the repeal thereof. Where the tax has been paid without taking the deduction, a claim for refund may be made, as provided by Article 99.

The burden of proving that the estate is entitled to the deduction rests upon the executor, and in doing so it will be incumbent upon him to show that no part of the amount so claimed is also claimed as a deduction under either paragraphs (1) or (3) of subdivision (a) of section 303.

ART. 42. Property originally received.—If the property originally received from a donor or prior decedent is included in the decedent's gross estate, the executor must describe it fully and prove its identity.

ART. 43. Property acquired in exchange.—The deduction for substituted property is not limited to property acquired by a single exchange of property received from the donor or the prior decedent, but extends to substituted property acquired by the process of exchange, whether through the medium of money or otherwise, irrespective of the number of conversions involved, including the proceeds of the sale or other disposition of property so received or acquired, as well as property acquired by purchase with the proceeds of the sale or other disposition of such property so long as such proceeds can be conclusively identified as such and clearly traced to the property originally so received.

The executor must describe and fully identify both the property originally received from the donor or the prior decedent and the substituted property for which deduction is claimed, giving the date and stating the nature of the transaction by which the substituted property was acquired, together with the name and address of the transferee. If the transaction was evidenced by written instrument of public record, precise reference to such record must be made, and if by instrument not of record, a verified copy thereof must be supplied. If there was no written instrument, there must be furnished the affidavit of one or more persons having personal knowledge of the matter, setting forth the facts in connection therewith.

The burden of identifying property as acquired in exchange for property included in the gross estate of the prior decedent for Federal estate tax purposes rests upon the executor.

DEDUCTIONS—TRANSFERS FOR PUBLIC, CHARITABLE, RELIGIOUS, ETC., USES

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate— * * *

(3) The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal

society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate; and * * *

ART. 44. Transfers for public, charitable, religious, etc., uses.—Deduction may be taken of the value of all property transferred by will or by the decedent in his lifetime not to exceed the value of the transferred property required to be included in the gross estate where in either case the property was transferred (1) to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes; or (2) to or for the use of any corporation or association organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals), where no part of the net earnings of the corporation or association inures to the benefit of any private stockholder or individual; or (3) to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, where such transfers, legacies, bequests, or devises are to be used by such trustee, trustees, fraternal society, order, or association exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

Where a trust is created for both a charitable and a private purpose, deduction may be taken of the value of the beneficial interest in favor of the former only in so far as such interest is presently ascertainable, and hence severable from the interest in favor of the private use. Thus, when money or property is placed in trust to pay the income to an individual during his life, and then to pay or deliver the principal to a charitable corporation, or to apply it to a charitable purpose, the present value of the principal is deductible. For the manner of determining such value, see Article 13, subdivision (10).

The deduction is not limited, in the estates of resident decedents, to transfers to domestic corporations or associations, or to trustees for use within the United States.

ART. 45. Religious, charitable, scientific, and educational corporations.—A corporation or association to which such a transfer was made must meet three tests: (1) It must be organized and operated for one or more of the specified purposes; (2) it must be organized and operated exclusively for such purpose or purposes; and (3) no part of its net earnings shall inure to the benefit of private stockholders or individuals.

The estate is not deprived of the right to deduct the value of property so transferred by reason of the fact that private individuals are the recipients of the benefits which the corporation or association dispenses. Such right is, however, lost wherever any part of the net earnings of the corporation or association inures to the benefit of a private stockholder or individual.

ART. 46. Proof required.—In establishing the right of the estate to this deduction, the executor must submit:

(1) Duplicate copies of the will of the decedent, and of the order admitting the will to probate, one copy of each of which should be certified. Duplicate copies of any instrument in writing by which the decedent made a transfer of property in his lifetime the value of which is required by the statute to be included in his gross estate, and if the instrument is of record one copy thereof should be certified, and if not of record, one copy should be verified. The certified or verified copy should be forwarded by the Collector to the Commissioner.

(2) An affidavit by the executor stating whether any action has been instituted to contest the will, or any bequest, or devise therein, the deduction of which from the gross estate is claimed, and whether, according to his information and belief, any such action is designed or contemplated.

(3) Such other documents or evidence as may be requested by the Commissioner.

ART. 47. Conditional bequests.—Where the transfer is dependent upon the performance of some act or the happening of some event in order to become effective, it is necessary that the performance of the act or the occurrence of the event shall have taken place before the deduction can be allowed.

Where the legatee, devisee, donee, or trustee is empowered to divert the property or fund, in whole or in part, to a use or purpose which would have rendered it, to the extent that it is subject to such power, not deductible had it been directly so bequeathed, devised, or given by the decedent, deduction will be limited to that portion, if any, of the property or fund which is exempt from an exercise of such power.

SPECIFIC EXEMPTION

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate— * * *

(4) An exemption of \$100,000. * * *

ART. 48. Specific exemption.—There may be deducted from the gross estate of all resident decedents who died subsequent to 10.25 a. m.,

Washington, D. C., time, February 26, 1926, a specific exemption of \$100,000. Where a resident decedent died prior to 10.25 a m., February 26, 1926, the specific exemption which may be deducted is only \$50,000. If more than one return is made for purposes of the tax, the exemption may be taken but once. No such exemption is allowed in the estate of nonresident decedents.

ESTATES OF NONRESIDENTS

SEC. 303. * * * (d) For the purpose of this title, stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States, and any property of which the decedent has made a transfer, by trust or otherwise, within the meaning of subdivision (c) or (d) of section 302, shall be deemed to be situated in the United States, if so situated either at the time of the transfer, or at the time of the decedent's death.

(e) The amount receivable as insurance upon the life of a nonresident decedent, and any moneys deposited with any person carrying on the banking business, by or for a nonresident decedent who was not engaged in business in the United States at the time of his death, shall not, for the purpose of this title, be deemed property within the United States.

(f) Missionaries duly commissioned and serving under boards of foreign missions of the various religious denominations in the United States, dying while in the foreign missionary service of such boards, shall not, by reason merely of their intention to permanently remain in such foreign service, be deemed nonresidents of the United States, but shall be presumed to be residents of the State, the District of Columbia, or the Territories of Alaska or Hawaii wherein they respectively resided at the time of their commission and their departure for such foreign service.

ART. 49. Domicile.—For meaning of the terms “residents” and “nonresidents,” and the presumption applying as to the residence of missionaries, see Article 5.

ART. 50. Situs of property of nonresident decedents.—Real estate within the United States, certificates of stock, bonds, bills, notes, and mortgages, physically in the United States at date of death, moneys due on open accounts by domestic debtors, and stock of a corporation or association created or organized in the United States, constitute property having a situs in the United States. As to the meaning of the term “United States,” see Article 5. On the other hand, insurance upon the life of a nonresident, and moneys deposited by or for a nonresident not engaged in business in the United States at the time of his death with any person (for meaning of the term “person,” see section 2 (a) (1) of the statute) carrying on the banking business in the United States, are not to be regarded as property situated therein.

Property of which the decedent has made a transfer (1) in contemplation of or intended to take effect in possession or enjoyment at or after death, or (2) the enjoyment of which was subject, at the date of his death, to any change through a power, exercisable either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where such power was relinquished in contemplation of death, is deemed to be situated in the United States is so situated either at the time of the transfer, or at the time of the decedent's death. (See Arts. 15 to 20, inclusive.)

DEDUCTIONS—ESTATES OF NONRESIDENTS

Sec. 303. For the purpose of the tax the value of the net estate shall be determined— * * *

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—

(1) That proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated, but in no case shall the amount so deducted exceed 10 per centum of the value of that part of his gross estate which at the time of his death is situated in the United States;

(2) An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from such donor by gift or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under the Revenue Act of 1924, or an estate tax imposed under this or any prior Act of Congress was paid by or on behalf of the donor or the estate of such prior decedent as the case may be, and only in the amount of the value placed by the Commissioner on such property in determining the value of the gift or the gross estate of such prior decedent, and only to the extent that the value of such property is included in that part of the decedent's gross estate which at the time of his death is situated in the United States and not deducted under paragraph (1) or (3) of this subdivision; and

(3) The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but

only if such contributions or gifts are to be used within the United States by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

(c) No deduction shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section 304 the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States.

* * * * *
 SEC. 401, Revenue Act 1928. (a) Section 303 (b) (1) of the Revenue Act of 1926 (relating to deductions from the gross estate of a nonresident decedent) is amended by striking out: “, but in no case shall the amount so deducted exceed 10 per centum of the value of that part of his gross estate which at the time of his death is situated in the United States.”

(b) Subsection (a) of this section shall apply in the case of nonresident decedents dying after the enactment of this Act.

ART. 51. **Net estate.**—The gross estate of a resident and of a nonresident are made up in the same way. In ascertaining the net estate, however, the transfer of which is subject to tax, there is a radical difference between the two cases. The net estate in the case of a resident is determined by making specified deductions from the entire gross estate, whereas the net estate in the case of a nonresident is determined by making the deductions from the value of so much of the gross estate as is situated in the United States. Thus, in substance, the statute imposes the tax only upon the transfer of so much of the estate of a nonresident as, under the terms of the statute, had its situs in the United States. The estates of nonresidents are not entitled to the specific exemption of \$50,000 or \$100,000. (See Arts. 48 and 55.)

ART. 52. **Deduction of claims, expenses, etc.**—In estates of nonresidents, deduction from the gross estate may be taken, subject to the limitations herein subsequently to be referred to, for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, or from theft, when such losses are not compensated for by insurance or otherwise, amounts reasonably required and actually expended for the support during settlement of the estate of those dependent upon the decedent, as are allowed by the laws of the jurisdiction under which the estate is being administered. Treatment of the several deductions enumerated above will be found in Articles 29 to 40, inclusive. No deduction may be taken of any income taxes upon income received after the death of the decedent, or of any estate, succession, legacy, or in-

heritance taxes. It is immaterial whether the amounts to be deducted were incurred or expended within or without the United States, but certain limitations are imposed which do not apply to estates of resident decedents, namely: (1) Only that proportion of the aggregate thereof is deductible which the value of that part of the gross estate situated (within the meaning of the statute) in the United States, bears to the value of the entire gross estate, wherever situated; and where the decedent died prior to the effective date of the Revenue Act of 1928, no sum may be deducted in excess of 10 per cent of the value of that part of the gross estate situated in the United States. (See Art. 55.) The 10 per cent limitation does not apply to the deductions subsequently considered in Articles 53 and 54. (2) No deduction whatever may be taken unless the executor includes in the return the value at the date of the nonresident's death of that part of the gross estate not situated in the United States.

In order that the Commissioner may properly pass upon the items claimed as deductions, the executor should submit a certified copy of the schedule of liabilities, claims against the estate, and expenses of administration filed under the foreign death-duty act; or, if no such schedule was filed, a certified copy of the schedule of such liabilities, claims, and expenses filed with the foreign court in which administration was had; or, if items of deduction allowable under section 303 (b) (1) were not included in either such schedule, or if no such schedules were filed, then the affidavit of the foreign executor setting forth the facts relied upon as entitling the estate to the benefit of the particular deduction or deductions.

ART. 53. Deduction of value of transfers previously taxed.—The right to deduct the value of property received by a nonresident decedent by gift from any person within five years prior to his death, or by gift, bequest, devise, or inheritance from any person who died within five years prior to his death, or of the value of property acquired in exchange for property so received, is governed by the same rules as those applying to estates of resident decedents (Articles 41 to 43, inclusive), subject to the two following exceptions: (1) That such right is limited to the extent that the value of the property, or that acquired in exchange therefor, is not deducted under paragraphs (1) or (3) of subdivision (b) of section 303; (2) that such right is not available to any extent unless the executor includes in the return the value at the time of the decedent's death of that part of the gross estate not situated in the United States. (See Art. 52.)

ART. 54. Deduction of value of transfers for public, charitable, religious, etc., uses.—The right to deduct the value of property trans-

ferred by nonresidents for public, religious, charitable, scientific, literary, or educational purposes is governed by the same rules as those applying to estates of resident decedents (Arts. 44 to 47, inclusive), subject, however, to the two following exceptions, namely: (1) That the right is limited to transfers to corporations and associations created or organized in the United States, or to trustees for use within the United States, and, (2) is then available only where the executor includes in the return the value at the time of the non-resident decedent's death of that part of the gross estate not situated in the United States.

Instead of duplicate copies of the documents specified in Article 46, only one copy is required to be filed.

ART. 55. Determination of net estate.—The following example will show the manner of determining the net estate of a nonresident decedent. The gross estate, wherever situated, amounts to \$1,000,000, of which \$200,000 represents the value of the property having its situs within the United States (the term "United States" including not only the several States, but also the Territories of Alaska and Hawaii, and the District of Columbia). The funeral expenses, administration expenses, and claims against the estate aggregate \$150,000, and there are charitable bequests, for use within the United States, amounting to \$25,000. Hence the property situated within the United States constitutes 20 per cent of the entire gross estate wherever situated, and a like percentage of the \$150,000 is \$30,000. The following result is accordingly obtained:

Gross estate within the United States.....	\$200,000
20 per cent of \$150,000.....	\$30,000
Charitable bequests for use within the United States.....	25,000
	<hr/> 55,000
Net estate	145,000

For the manner of computing the tax on the net estate, see Article 8.

In the example given, had the decedent died prior to the effective date of the Revenue Act of 1928, 20 per cent of the funeral expenses, administration expenses and claims against the estate, or \$30,000, would not have been deductible for the reason that it would have exceeded 10 per cent of the value of the property situated in the United States. The deduction in such case would have been limited to 10 per cent of \$200,000, plus the charitable bequests, or a total of \$45,000, and the resultant net estate would have been \$155,000, instead of the amount given in the example.

ART. 56. Payment of tax.—The provisions relating to credits (see Art. 9) and to rates and payment of the tax are the same in estates

of nonresidents and of residents. The statute provides that the executor shall pay the tax. If there is no executor or administrator appointed, qualified, and acting within the United States, every person in either the actual or constructive possession of any property of the decedent is constituted by the statute an executor for the purpose of tax payment, and is liable for the tax to the extent of the property so in his possession. (See Arts. 78 to 85, inclusive.) All checks, drafts, or money orders should be made payable to the order of Collector of Internal Revenue.

PRELIMINARY NOTICE—ESTATES OF RESIDENTS

SEC. 304. (a) The executor, within two months after the decedent's death, or within a like period after qualifying as such, shall give written notice thereof to the collector. * * *

ART. 57. **When notice required.**—A preliminary notice is required to be filed in the case of every resident decedent whose gross estate exceeded \$100,000 in value at the date of death, if the decedent died subsequent to the effective date of the Revenue Act of 1926. If death occurred prior to the effective date of the Revenue Act of 1926, notice is required if the gross estate exceeded \$50,000 in value at the date of death. The notice must be filed within two months after the decedent's death or within two months after the executor has qualified and must be filed in duplicate with the collector in whose district the decedent had his domicile at the time of death. Where there is doubt as to whether the gross estate exceeded \$100,000, or exceeded \$50,000, as the case may be, the notice should be filed as a matter of precaution in order to avoid the possibility of penalties attaching.

ART. 58. **Notice by executor or administrator.**—The duly qualified executor or administrator is required to file such preliminary notice on Form 704, copies of which may be obtained from the collector, within two months after qualifying as such, if notice has not already been filed. The primary purpose of the notice is to advise the Government of the existence of taxable estates, and filing should not be delayed beyond the two months' period because of uncertainty as to the exact value of the assets. Since the filing of the notice within the prescribed period is mandatory, the estimate of the gross estate called for by the notice is merely the best approximation of value which can be made within the time allowed. The instructions upon the back of the form should be read carefully before executing the notice. The signature of one executor or administrator upon Form 704 is sufficient. For penalties for delinquency in filing notice, or for filing a false or fraudulent notice, see Articles 91, 92, and 94.

ART. 59. **Notice by others than duly qualified executor or administrator.**—The term "executor" embraces any person in actual or con-

structive possession of any property of the decedent at the time of the latter's death, where within two months after the decedent's death no executor or administrator qualifies. The notice on Form 704 must be filed by such persons in every case where an executor or administrator has not duly qualified within such period. Where, within the period mentioned, an executor or administrator qualifies, the duty of filing the notice devolves upon him, and all other persons are relieved therefrom.

PRELIMINARY NOTICE—ESTATES OF NONRESIDENTS

ART. 60. *Estates of nonresidents; preliminary notice.*—In estates of nonresidents, notice on Form 705, copies of which may be obtained from the Commissioner of Internal Revenue, Washington, D. C., or from any United States Collector of Internal Revenue, upon application, is required in the case of every nonresident decedent any part of whose gross estate was situated (within the meaning of the statute, as to which see Art. 50), in the United States. The notice must be filed, in duplicate, by every appointed, qualified, and acting executor or administrator within the United States with the United States Collector of Internal Revenue of the district in which such part of the gross estate was situated, or, if parts of the gross estate were situated in more than one district, or if the gross estate consists wholly of stock in a domestic corporation, then with the collector for the Second District of New York, Customhouse, New York, N. Y., or with such collector as the Commissioner may designate. The notice is necessary if any part of the decedent's gross estate was situated, within the meaning of the statute, in the United States, regardless of the value of that part or of the entire gross estate. If no executor or administrator has qualified, notice must be filed within two months after the date of death by every person in either the actual or constructive possession of any property of the decedent so within the United States at the time of his death. If such person has no knowledge of the decedent's death within two months following its occurrence, he should file the notice immediately upon obtaining such knowledge. The term "person in actual or constructive possession of any property of the decedent" (sec. 300) includes, among others, the decedent's agents and representatives; safe-deposit companies, warehouse companies, and similar custodians of property in this country of a nonresident decedent; brokers holding, as collateral, securities belonging to the decedent or investment funds owned by the decedent, and debtors of the decedent in this country. As to any moneys deposited by or for a nonresident decedent with any person, corporation, or association carrying on the banking business, no notice is required, unless, however, the decedent was engaged in business in the United States at the time of his death.

ART. 61. Information return by corporation or transfer agent.—Upon notification from the Bureau of Internal Revenue a corporation (organized or created in the United States), or its transfer agent will be required to file a return disclosing the following information pertaining to stocks or bonds registered in the name of a nonresident decedent: (1) Name of decedent as registered; (2) date of death, residence, place of death, and names and addresses of executors, attorneys, or other representatives within and without the United States, if known; and (3) a description of the securities and the number of shares or bonds and the par values. Treasury Department Form 714, which will be supplied by the Bureau upon request, may be used for the return.

ART. 62. Transfer certificates.—Certificates permitting the transfer of property of nonresident decedents without liability will be issued by the Commissioner when he is satisfied that the tax imposed upon the estate, if any, has been fully discharged or provided for. The tax will be considered fully discharged for the purpose of the issuance of a transfer certificate only when investigation has been completed and payment of the tax including any deficiency finally determined has been made. Where the tax liability has not been fully discharged transfer certificates may be issued permitting the transfer of particular items of property without liability upon the filing with the Commissioner of such security as he may require. No corporation or its transfer agent should transfer stock or bonds registered in the name of a nonresident decedent without first requiring this transfer certificate covering all of the decedent's stock and bonds of the corporation and showing that such transfer may be made without liability. A bank, trust company, or other custodian in possession of bills, notes, cash, mortgages, securities, money due on open accounts by domestic debtors, or any other property situated in the United States of a nonresident decedent's estate should also require the certificate before transferring such property. Corporations, transfer agents, banks, trust companies, or other custodians can insure avoidance of liability for tax and penalties only by demanding and receiving transfer certificates prior to transfer of property of nonresident decedents.

The requirements of this and the preceding article do not apply where there is an executor or administrator appointed, qualified and acting within the United States.

THE RETURN—ESTATES OF RESIDENTS

SEC. 304. (a) * * * The executor shall also, at such times and in such manner as may be required by regulations made pursuant to law, file with the collector a return under oath in duplicate, setting forth (1) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident, of that part of his gross

estate situated in the United States; (2) the deductions allowed under section 303; (3) the value of the net estate of the decedent as defined in section 303; and (4) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

(b) Return shall be made in all cases where the gross estate at the death of the decedent exceeds \$100,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate.

SEC. 306. As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax.

ART. 63. When return required—Date of filing.—A return on Form 706 is required in the case of every resident decedent whose gross estate, as defined in the statute, exceeded \$100,000 in value at the date of his death. If the decedent died prior to 10.25 a. m., Washington, D. C., time, February 26, 1926, the return should be filed in case the gross estate exceeded \$50,000 in value at date of death. This return must be filed with the collector for the district in which the decedent was domiciled at the time of his death. It must be filed in duplicate within one year after the date of death, or, in any particular instance, at such time prior to the expiration of such year as the Commissioner may designate. When the due date for filing the return falls on a Sunday or on a legal holiday, the due date for filing will be the day following such Sunday or legal holiday. If placed in the mails the return should be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the date on which the return is required to be filed. If a return is made and placed in the mails in due course, properly addressed, and postage paid, in ample time to reach the office of the collector on or before the due date, no penalty will attach should the return not be actually received by such officer until subsequent to that date.

ART. 64. Persons liable for return.—The statute provides that the duly qualified executor or administrator shall file the return. If there is more than one executor or administrator, the return must be made jointly by all. Where no executor or administrator has been appointed, every person in actual or constructive possession of any property of the decedent is constituted by the statute an executor for the purposes of the tax (sec. 300), and is required to make and file a return as provided by section 304. Where, in any case, the

executor is unable to make a complete return as to any part of the gross estate, he is required to give all the information he has as to such property, including a full description, and the name of every person holding a legal or beneficial interest in the property. Where the executor is unable to make a return as to any property, the statute requires that every person holding a legal or beneficial interest therein shall, upon notice from the collector, make return as to such part of the gross estate. For penalties for delinquency in filing return, or for filing a false or fraudulent return, see Articles 91, 92, and 94.

ART. 65. Preparation of return.—The return must be made on Form 706, copies of which will be supplied by the collector upon application. It must be filed in duplicate, under oath, and contain an itemized inventory, by schedule, of the property constituting the gross estate. The deductions must also be listed on the appropriate schedules. The instructions printed on the form should be carefully followed. All documents and vouchers used in preparing the return should be retained by the executor so as to be available for inspection whenever required. Duplicate copies of the will, if the decedent died testate, one of which should be certified, must be submitted with the return, together with copies of such other documents as in Form 706 and in the applicable articles of these regulations are required. There may also be filed in duplicate copies of any documents which the executor may desire to submit with the return in explanation thereof.

ART. 66. Supplemental data.—The statute provides that the executor, in addition to filing notice and return, shall furnish such supplemental data as may be necessary to establish the correct tax (sec. 304). It is therefore the duty of the executor to furnish upon request copies of any documents in his possession relating to the estate, or on file in any court having jurisdiction over the estate, appraisal lists of any items included in the gross estate, copies of balance sheets or other financial statements relating to the value of stock, and any other information obtainable by him that may be found necessary in the determination of the tax. Failure to comply with such a request will render the executor liable to penalties (Art. 93), and proceedings may be instituted in the proper United States court to secure compliance therewith (sec. 1122 (a)).

Persons having possession or control of any records or documents containing or supposed to contain any information concerning the estate, or having knowledge or information of any fact or facts of a material bearing upon the liability, or the extent of liability, of the estate to the tax, shall, upon request of the Commissioner or any revenue agent or inspector designated by him for that purpose, make

disclosure thereof. Failure on the part of any person to comply with such request will render him liable to penalties (Art. 93), and compliance with the request may be enforced in the proper United States court (sec. 1122 (a)).

ART. 67. Investigation of returns.—An investigation of every return for estate tax will be conducted to verify its accuracy. The investigation will be made by special officers of the Bureau. The fact that an investigation is made does not reflect upon the competence or good faith of the executor, since investigations are required in all cases. The executor should cooperate with the examining officer in order that the tax liability may be correctly determined and the case closed. During the course of the investigation the examining officer will inspect the tangible property of the decedent and the books and records of the estate, interview the executor and other persons having knowledge of the decedent's affairs, verify the value of the assets and the amounts of the deductions, and take such other steps as may be necessary in order that the correct amount of tax may be determined.

Wherever it is practicable to do so, the Bureau will, in its discretion, or upon the executor's request to the Commissioner, make its field investigation simultaneously and in cooperation with the officials having in charge the matter of determining the amount of tax due the State or Territory by virtue of the decedent's death. Such investigation will extend to all questions in so far as they have bearing both upon the tax liability of the estate under the Federal estate tax law and the taxing act of the particular State or Territory, and comprehend the disclosure to the agents of the State or Territory of information contained in the return as well as that obtained upon investigation, provided a like cooperation is given by the agency of the State or Territory. Such disclosure may be made by the field-investigating officer or his superiors, either during the investigation or subsequent thereto. The investigations made in cooperation with the State or Territory are, like all others, limited to an ascertainment of information to aid the Commissioner, who alone under the law is empowered to determine the tax, in arriving at a conclusion as to the Federal estate tax liability of the estate.

The Bureau often has access to information having a material bearing upon the value of property not available to its field agents, and hence it not infrequently happens that the value of an asset as determined by the Commissioner is more or less than that which would result from a determination based only upon information gathered by the field investigating officer of the Bureau. It is manifest, therefore, that whatever value is placed upon an asset by the State or Territory officials, or recommended to the Bureau by its

field agent, can not be accepted unless such value is confirmed by the Commissioner.

Upon completion of every investigation the executor will, except as otherwise provided in Article 76, be apprised by the investigating officer of his findings, and will be given an opportunity to protest against the findings and an oral hearing before the internal revenue agent in charge will be granted in connection with the protest. The provisions relating to protests and hearings are set forth in detail in Article 76. Upon the completion of a review and audit by the Commissioner, the executor will be informed of the result thereof by letter or certificate of overassessment. If the executor is notified of an amount of unpaid tax, such unpaid amount should be remitted to the collector.

It is the purpose of the Commissioner to make all investigations as soon as practicable after the filing of the return and to determine the tax with the least possible delay. Where the executor makes written application to the Commissioner for a determination of the tax and discharge from personal liability therefor the Commissioner will within one year after receipt of such application, or if application is made before the return is filed, then within one year after the return is filed, notify the executor of the amount of the tax, and upon payment thereof, the executor will be discharged from personal liability for any deficiency in the tax thereafter found to be due. (See sec. 313 (b) and (c).) The executor and the Commissioner (or any officer or employee authorized by him), subject to approval of the Secretary or the Undersecretary of the Treasury, may enter into a closing agreement relating to the tax liability of the estate which will be final and conclusive except upon a showing of fraud or malfeasance, or misrepresentation of a material fact. (See Art. 76.)

EXTENSION OF TIME FOR FILING RETURN

Revised Statutes, Sec. 3176, as amended by Sec. 1103, Revenue Act, 1926: * * * If the failure to file a return (other than a return under Title II of the Revenue Act of 1924 or Title II of the Revenue Act of 1926) or a list is due to sickness or absence, the collector may allow such further time, not exceeding 30 days, for making and filing the return or list as he deems proper. * * *

ART. 68. Extension of time by collector.—In case of sickness or absence, collectors are authorized to grant an extension of time for filing the return for a period not in excess of 30 days from the due date, which extension may be granted either before or after the due date. An extension of time for filing the return does not in itself operate to extend the time for the payment of the tax, which is due

and payable one year after the date of the decedent's death. For extension of time of payment, see Article 82.

ART. 69. Extension of time by Commissioner.—If it is impossible for the executor to file a reasonably complete return within one year from the date of death, the Commissioner may, upon application from the executor showing good and sufficient cause, grant an extension of time not to exceed six months from the due date. Before the expiration of the extension period granted a return as complete as possible must be filed, and the executor may thereafter file an amended return when the condition of the estate permits. An extension of time for filing the return does not operate to extend the time for the payment of the tax, which is due one year after the decedent's death. An extension of time in which to make payment of the tax may be secured as provided in Article 82.

THE RETURN—ESTATES OF NONRESIDENTS

ART. 70. Return of estates of nonresidents.—A return on Form 706, copies of which may be obtained from the Commissioner of Internal Revenue, Washington, D. C., or from any United States Collector of Internal Revenue, upon application, is required in the case of every nonresident decedent any part of whose gross estate was situated (within the meaning of the statute, as to which see Art. 50), in the United States. The return must be filed with the United States Collector of Internal Revenue of the district in which such part of the gross estate was situated, or, if parts of the gross estate were situated in more than one district or if the gross estate consists wholly of stock in a domestic corporation, then with the Collector for the second district of New York, Customhouse, New York, N. Y., or with such collector as the Commissioner may otherwise designate. The return must be filed in duplicate and under oath within one year after the decedent's death, or, in any particular instance, at such time prior to the expiration of such year as the Commissioner may designate, unless an extension is obtained pursuant to Article 68 or 69. When the due date for filing the return falls on a Sunday or on a legal holiday, the due date for filing will be the day following such Sunday or legal holiday. If placed in the mails the return should be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the date on which the return is required to be filed. If a return is made and placed in the mails in due course, properly addressed, and postage paid, in ample time to reach the office of the collector on or before the due date, no penalty will attach should the return not be actually received by such officer until subsequent to that

date. The return should be made and filed by the executor or administrator appointed, qualified, and acting within the United States, or, if none, then by any person in actual or constructive possession of any property of the decedent situated (within the meaning of the statute) in the United States, whatever its value. If the qualified executor or administrator is unable to make a complete return as to any part of the gross estate, he is required to give all the information available to him as to such part, including a description thereof and the name of every person holding a legal or beneficial interest therein. As to the meaning of the term "person in actual or constructive possession of any property of the decedent," see Article 60.

ART. 71. Supplemental data.—Pursuant to the provisions of section 304 (a), with respect to furnishing supplemental data, the executor of the will of a nonresident decedent is required to file with the return:

(1) A certified copy of will, if decedent died testate, or, if the decedent left several wills to govern in different jurisdictions, certified copy of each will.

(2) If any deductions are claimed, copy of inventory of property filed under the foreign death-duty act; or, if no such inventory was filed, a certified copy of inventory filed with the foreign court of probate jurisdiction.

The Commissioner may require the documents specified in paragraph No. (2) regardless of whether deductions are claimed. For requirements dealing with the duty to furnish other documents or information relating to the tax liability of the estate, and penalties in connection therewith, see Article 66.

PRIVILEGED CHARACTER OF RETURNS

ART. 72. Returns confidential.—All estate tax returns and notices are treated as privileged communications and may not be exhibited other than to the executor or his duly authorized agent, except as stated in Articles 67 and 73. This requirement will be rigidly enforced, and extends to information of a private nature submitted or obtained in connection with a return or notice. The requirement does not operate to prevent internal revenue officers from disclosing the returned value of any item or the amount of any specific deduction, where such disclosure is necessary in order to arrive at a correct determination of the tax. This right of disclosure, however, does not extend to such information as the amount of the estate, the amount of tax, or other general data. Nor are the records in possession of the Bureau, whether on file with the Commissioner or

the collector, open to inspection, except as provided in Articles 67 and 73. Where a copy of the return is desired because no copy was retained by the executor or the retained copy has been lost or destroyed, or for other satisfactory reasons, such copy may be furnished by the Commissioner to the executor, or his authorized attorney, upon payment of the fee prescribed.

ART. 73. Disclosure other than to executor.—Where any person other than the executor has a material interest in ascertaining any fact disclosed by the return, or in obtaining information as to the payment of the tax, or where an officer of a State or Territory requires information contained in a return or obtained upon investigation for his official use in connection with an estate, inheritance, legacy, or succession tax of the State or Territory, he shall make a written application to the Commissioner of Internal Revenue for such information, setting forth the nature of his interest and the purpose of the application. The Commissioner will review the application, and, if it is approved, the collector will be directed to exhibit the return to the applicant, or give him such information as is specified, or the Commissioner may permit an inspection of or furnish a copy of the return on file in the Bureau, or may furnish such information as he deems advisable.

Under no circumstances shall the collector give information to persons other than the executor except upon the written order of the Commissioner, and then only to the extent authorized by such order.

If an attorney or other person asks a ruling on a question of law arising in a specific case, the Commissioner will require satisfactory evidence of the right to obtain such ruling. Hypothetical questions, however, can not be answered.

ART. 74. Attorneys must have authorization.—In all cases where information is sought regarding an estate, or an interview is asked, by an attorney or by any agent of the executor or administrator, the information or interview will be denied unless the attorney or agent presents a duly executed power of attorney from the executor or administrator authorizing the attorney or agent to act in his behalf.

No attorney or agent will be recognized as representing an estate or executor unless such attorney or agent is enrolled to represent claimants or others before the Treasury Department. For regulations governing enrollment, reference should be made to Treasury Department Circular No. 230, as revised, copies of which may be obtained upon application to the Secretary of the Committee on Enrollment and Disbarment, Treasury Department, Washington, D. C.

RETURN BY COLLECTOR OR COMMISSIONER

Revised Statutes, section 3176, as amended by section 1103, Revenue Act of 1926: If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner of Internal Revenue may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be *prima facie* good and sufficient for all legal purposes. * * *

ART. 75. Where no return filed, or a false or fraudulent return filed.—Section 3176 of the Revised Statutes provides that if any person fails to make and file a return at the time required, or makes, willfully or otherwise, a false or fraudulent return, the collector or deputy collector shall make a return. The Commissioner may also make a return or amend any return made by a collector or deputy collector. A return so made by the Commissioner, or made by the collector or deputy collector and approved by the Commissioner, shall be *prima facie* good and sufficient for all legal purposes. Where a tax is found to be due upon such a return, both the estate and the executor will be liable for penalties as well as for the tax.

DEFICIENCY TAX

SEC. 307. As used in this title in respect of a tax imposed by this title the term "deficiency" means—

(1) The amount by which the tax imposed by this title exceeds the amount shown as the tax by the executor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the executor upon his return, or if no return is made by the executor, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax.

PROTESTS AND PETITIONS

SEC. 308. (a) If the Commissioner determines that there is a deficiency in respect of the tax imposed by this title, the Commissioner is authorized to send notice of such deficiency to the executor by registered mail. Within 60 days after such notice is mailed (not counting

Sunday as the sixtieth day), the executor may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. Except as otherwise provided in subdivision (d) or (f) of this section or in section 312 or 1001, no assessment of a deficiency in respect of the tax imposed by this title and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the executor, nor until the expiration of such 60-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3224 of the Revised Statutes the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court. * * *

(e) The Board shall have jurisdiction to redetermine the correct amount of the deficiency, even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the executor, and to determine whether any additional amount or addition to the tax should be assessed, if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) If after the enactment of this Act the Commissioner has mailed to the executor notice of a deficiency as provided in subdivision (a), and the executor files a petition with the Board within the time prescribed in such subdivision, the Commissioner shall have no right to determine any additional deficiency, except in the case of fraud, and except as provided in subdivision (e) of this section or in subdivision (c) of section 312. If the executor is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered, for the purposes of this subdivision or of subdivision (a) of this section, or of section 319, as a notice of a deficiency, and the executor shall have no right to file a petition with the Board of Tax Appeals based on such notice, nor shall such assessment or collection be prohibited by the provisions of subdivision (a) of this section. * * *

* * * * *

SEC. 318. (a) If after the enactment of this Act the Commissioner determines that any assessment should be made in respect of any estate or gift tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or by any such Act as amended, the Commissioner is authorized to send by registered mail to the person liable for such tax notice of the amount proposed to be assessed, which notice shall, for the purposes of this Act, be considered a notice under subdivision (a) of section 308 of this Act. In the case of any such determination the amount which should be assessed (whether as deficiency or additional tax or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in case of delinquency in payment after notice and demand and the provisions prohibiting claims and suits for refund) as in the case

of a deficiency in the tax imposed by this title, except that in the case of an estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, the period of limitation prescribed in section 1109 of this Act shall be applied in lieu of the period prescribed in subdivision (a) of section 310. * * *

(b) If before the enactment of this Act any person has appealed to the Board of Tax Appeals under subdivision (a) of section 308 of the Revenue Act of 1924 (if such appeal relates to a tax imposed by Title III of such Act or to so much of an estate tax imposed by any of the prior Acts enumerated in subdivision (a) of this section as was not assessed before June 3, 1924), and the appeal is pending before the Board at the time of the enactment of this Act, the Board shall have jurisdiction of the appeal. In all such cases the powers, duties, rights, and privileges of the Commissioner and of the person who has brought the appeal, and the jurisdiction of the Board and of the courts, shall be determined, and the computation of the tax shall be made, in the same manner as provided in subdivision (a) of this section, except as provided in subdivision (h) of this section and except that the person liable for the tax shall not be subject to the provisions of subdivision (a) of section 319.

(c) If before the enactment of this Act the Commissioner has mailed to any person a notice under subdivision (a) of section 308 of the Revenue Act of 1924 (whether in respect of a tax imposed by Title III of such Act or in respect of so much of an estate tax imposed by any of the prior Acts enumerated in subdivision (a) of this section as was not assessed before June 3, 1924), and if the 60-day period referred to in such subdivision has not expired before the enactment of this Act and no appeal has been filed before the enactment of this Act, such person may file a petition with the Board in the same manner as if a notice of deficiency had been mailed after the enactment of this Act in respect of a deficiency in a tax imposed by this title. In such cases the 60-day period referred to in subdivision (a) of section 308 of this Act shall begin on the date of the enactment of this Act, and the powers, duties, rights, and privileges of the Commissioner and of the person entitled to file the petition, and the jurisdiction of the Board and of the courts, shall, whether or not the petition is filed, be determined, and the computation of the tax shall be made, in the same manner as provided in subdivision (a) of this section.

(d) If any deficiency in any estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, was assessed before June 3, 1924, but was not paid in full before the date of the enactment of this Act, and if the Commissioner, after the enactment of this Act, finally determines the amount of the deficiency, he is authorized to send by registered mail to the person liable for such tax notice of such deficiency, which notice shall, for the purposes of this Act, be considered a notice under subdivision (a) of section 308 of this Act. In the case of any such final determination the amount of the tax (whether as deficiency or additional tax or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and

paid in the same manner and subject to the same provisions and limitations (including the provisions in cases of delinquency in payment after notice and demand, and the provisions relating to claims and suits for refund) as in the case of a deficiency in the tax imposed by this title, except as otherwise provided in subdivision (g) of this section, and except that the period of limitation prescribed in section 1109 of this Act shall be applied in lieu of the period prescribed in subdivision (a) of section 310.

(e) If any deficiency in any estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, was assessed before June 3, 1924, but was not paid in full before that date, and if the Commissioner after June 2, 1924, but before the enactment of this Act, finally determined the amount of the deficiency, and if the person liable for such tax appealed before the enactment of this Act to the Board of Tax Appeals and the appeal is pending before the Board at the time of the enactment of this Act, the Board shall have jurisdiction of the appeal. In all such cases the powers, duties, rights, and privileges of the Commissioner and of the person who has brought the appeal, and the jurisdiction of the Board and of the courts, shall be determined, and the computation of the tax shall be made, in the same manner as provided in subdivision (d) of this section, except as provided in subdivision (h) of this section and except that the person liable for the tax shall not be subject to the provisions of subdivision (a) of section 319.

(f) If any deficiency in any estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, was assessed before June 3, 1924, but was not paid in full before the date of the enactment of this Act, and if the Commissioner after June 2, 1924, finally determined the amount of the deficiency, and notified the person liable for such tax to that effect less than 60 days prior to the enactment of this Act and no appeal has been filed before the enactment of this Act, the person so notified may file a petition with the Board in the same manner as if a notice of deficiency had been mailed after the enactment of this Act in respect of a deficiency in a tax imposed by this title. In such cases the 60-day period referred to in subdivision (a) of section 308 of this Act shall begin on the date of the enactment of this Act, and, whether or not the petition is filed, the powers, duties, rights, and privileges of the Commissioner and of the person who is so notified, and the jurisdiction of the Board and of the courts, shall be determined, and the computation of the tax be made, in the same manner as provided in subdivision (d) of this section.

(g) In cases within the scope of subdivision (d), (e), or (f), if the Commissioner believes that the collection of the deficiency will be jeopardized by delay, he may, despite the provisions of subdivision (a) of section 308 of this Act, instruct the collector to proceed to enforce the payment of the unpaid portion of the deficiency, and notice and demand shall be made by the collector for the payment thereof. Within 30 days after such jeopardy notice and demand the person liable for the tax may obtain a stay of collection of the whole or any part of the amount included in the notice and demand by filing with the collector a bond in like manner, under the same conditions,

and with the same effect, as in the case of a bond to stay the collection of a jeopardy assessment under section 312 of this Act.

(h) In cases within the scope of subdivision (b) or (e) of this section where any hearing before the Board has been held before the enactment of this Act and the decision is rendered after the enactment of this Act, such decision shall, for the purposes of this title, be considered to have become final upon the date when it is rendered, and neither party shall have any right to petition for a review of the decision. The Commissioner may, within one year from the time the decision is rendered, begin a proceeding in court for the collection of any part of the amount disallowed by the Board, unless the statutory period of limitations properly applicable thereto has expired before the appeal was taken to the Board. The court shall include in its judgment interest upon the amount thereof in the same cases, at the same rate, and for the same period, as if such amount were collected otherwise than by proceeding in court. In any such proceeding by the Commissioner or in any suit by the taxpayer for a refund, the findings of the board shall be prima facie evidence of the facts therein stated.

(i) Where before the enactment of this Act a jeopardy assessment has been made under subdivision (d) of section 308 of the Revenue Act of 1924 (whether of a deficiency in the tax imposed by Title III of such Act or of a deficiency in an estate tax imposed by any of the prior Acts enumerated in subdivision (a) of this section) all proceedings after the enactment of this Act shall be the same as under the Revenue Act of 1924 as amended by this Act, except that—

(1) A decision of the Board rendered after the enactment of this Act where no hearing has been held by the Board before the enactment of this Act may be reviewed in the same manner as provided in this Act in the case of a tax imposed by this title;

(2) Where no hearing has been held by the Board before the enactment of this Act, the Commissioner shall have no right to begin a proceeding in court for the collection of any part of the deficiency disallowed by the Board; and

(3) In the consideration of the case the jurisdiction and powers of the Board shall be the same as provided in this Act in the case of a tax imposed by this title.

(j) In the case of any estate or gift tax imposed by prior Act of Congress, in computing the period of limitations provided in section 310 or 311 of this Act on the making of assessments and the beginning of distraint or a proceeding in court, the running of the statute of limitations shall be considered to have been suspended (in addition to the period of suspension provided for in subdivision (b) of sec. 310) for any period of time prior to the enactment of this Act during which the Commissioner was prohibited from making the assessment or beginning distraint or proceeding in court.

Section 606. Revenue Act, 1928:

(a) **Authorization.**—The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commissioner) is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any

internal-revenue tax for any taxable period ending prior to the date of the agreement.

(b) **Finality of agreements.**—If such agreement is approved by the Secretary, or the Undersecretary, within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

(c) Section 1106(b) of the Revenue Act of 1926 is repealed, effective on the expiration of 30 days after the enactment of this Act, but such repeal shall not affect any agreement made before such repeal takes effect.

ART. 76. Protests and petitions.—Upon completion of the investigation of the return (See Art. 67) the executor will be advised by the Internal Revenue Agent in Charge by letter of the result of the investigation, unless the time within which an assessment may be made will expire within 90 days, in which event the report of the investigation will be forwarded to the Commissioner immediately. Within 30 days from the date of such letter, or within 60 days where the executor is a nonresident or a resident of Alaska or Hawaii, the executor, if he desires to protest any part or all of the investigating agent's proposed findings, must file the protest with the Internal Revenue Agent in Charge. If a hearing is desired, request therefore must be made in the protest and the hearing must be held in the office of the Internal Revenue Agent in Charge who will thereafter forward to the Commissioner his recommendation, together with the report of any conference, the report of the investigating officer, the original copy of the protest, and any additional evidence or briefs submitted. If no such protest is filed within the prescribed time, the report of the investigating officer will be forwarded to the Commissioner with the recommendation of the Internal Revenue Agent in Charge.

Upon the Bureau's receipt of the investigating officer's report, the return will be audited in the Miscellaneous Tax Unit and the executor will be advised by letter of any tentatively determined deficiency in respect of the tax unless the time within which an assessment may be made will expire within 60 days, in which event the deficiency will be finally determined and notice thereof sent to the executor by registered mail. Within 30 days from the date of any letter from the Bureau setting forth the deficiency tax as tentatively determined, or within 60 days where the executor is a nonresident or a resident of Alaska or Hawaii, the executor may file a protest with,

or request a hearing in, the Miscellaneous Tax Unit, but such hearing will be granted (1) only where a protest, with the supporting evidence relied upon, was filed with and a hearing was had before the Internal Revenue Agent in Charge, or, (2) where the executor was not accorded an opportunity for a hearing before the Internal Revenue Agent in Charge; except that for good cause shown the Commissioner may in any case grant a hearing in the Miscellaneous Tax Unit.

If in the course of any investigation it appears that any false statement in any notice or return has been knowingly made, or a willful attempt has been made to evade tax, the report of the investigation will be forwarded to the Commissioner without advising the executor of the proposed findings of the investigating officer. Upon the Bureau's receipt of such report, the return will be audited in the Miscellaneous Tax Unit and the executor will be advised by letter as to such taxes and penalties as may tentatively be determined, and furnished a statement showing the computation of tax and penalties, unless the time within which an assessment may be made will expire within 60 days, in which event the deficiency will be finally determined and notice thereof sent to the executor by registered mail. Within 30 days from the date of any letter from the Bureau setting forth the tentatively determined tax and penalties, or within 60 days where the executor is a nonresident or a resident of Alaska or Hawaii, the executor may file a protest with the Miscellaneous Tax Unit and a hearing will be granted if requested in the protest. In any case where it is proposed to assert the ad valorem penalty for fraud, the hearing on the protest of the executor will be under the supervision of the General Counsel, Bureau of Internal Revenue, whose recommendation as to the assertion of any penalty will be obtained prior to final determination of the deficiency. In any case where it is proposed to impose any penalty mentioned in this paragraph without first advising the executor thereof, the recommendation of the General Counsel, Bureau of Internal Revenue, will be obtained prior to final determination of such penalty.

Where a protest is filed, it must be accompanied by the additional evidence relied upon and may be accompanied by a brief. The protest must be filed in duplicate, and must contain (a) the name of the estate; (b) a reference to the date and symbols appearing on the letter containing the tentative findings; (c) an itemized statement of the findings to which the executor takes exception; (d) a summary statement of the grounds upon which the executor relies in connection with each exception; and (e) in case the executor desires a hearing, a statement to that effect. Protests and accompanying statements of fact, if any, must be under oath. Every affidavit,

argument, brief, or statement of facts, prepared or filed by an attorney or agent as argument or evidence in the matter of a protest, must have therein a statement signed by such attorney or agent showing whether or not he prepared such document and whether or not the attorney or agent knows of his own knowledge that the facts contained therein are true. Where there is a hearing, should the executor not appear in person, his representative who appears must present a properly executed power of attorney and must be enrolled to practice before the Treasury Department. (See Art. 74.)

In all cases where a deficiency in respect of a tax (including penalties or other additions to the tax provided by law) is finally determined by the Commissioner, a notice thereof will be sent to the executor by registered mail in accordance with the provisions of section 308 (a) of the statute even though a jeopardy assessment (see Art. 77) is made. If, subsequent to the mailing of such notice, a jeopardy assessment is made in respect of the deficiency to which such notice relates no subsequent notice will be sent to the executor by the Commissioner, but if such jeopardy assessment is made, and the amount thereof is in excess of the deficiency to which the notice relates, the Commissioner will mail a notice to the executor as required by section 308 (a) of the determination of such additional deficiency provided no petition has theretofore been filed with the Board of Tax Appeals.

Within 60 days (not counting Sunday as the sixtieth day) after the mailing of the registered letter notifying him of the final determination of a deficiency by the Commissioner, the executor may file a petition with the Board of Tax Appeals for a redetermination of the deficiency, other than a deficiency resulting from the correction of a mathematical error appearing upon the return. (See Art. 77.) The right to file a petition with the Board exists whether the decedent died prior or subsequent to the enactment of the Revenue Act of 1926.

Where the executor acquiesces in the tentative or final determination of the whole or any part of the deficiency, the form of notice which will be forwarded with the letter of notification, waiving the restrictions on the assessment and collection provided in section 308 (a), should be executed by the executor and returned to the Commissioner in order to expedite assessment which stops the accrual of interest on the amount assessed until after notice and demand by the collector.

If the executor agrees to the tax liability as either tentatively or finally determined and desires to enter into a closing agreement authorized by section 606 of the Revenue Act of 1928, in order that the matter of the tax will not be reopened, an offer to enter into such

an agreement should be submitted to the Bureau. In order to facilitate such closing agreements Internal Revenue Agents in Charge and investigating officers will advise and assist the executor in respect thereof.

ASSESSMENT OF TAX

SEC. 308. * * * (b) If the executor files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the decision of the Board which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

(c) If the executor does not file a petition with the Board within the time prescribed in subdivision (a) of this section, the deficiency, notice of which has been mailed to the executor, shall be assessed, and shall be paid upon notice and demand from the collector.

(d) The executor shall at any time have the right, by a signed notice in writing filed with the Commissioner, to waive the restrictions provided in subdivision (a) of this section on the assessment and collection of the whole or any part of the deficiency.

(e) The Board shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the executor, and to determine whether any additional amount or addition to the tax should be assessed, if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) If after the enactment of this Act the Commissioner has mailed to the executor notice of a deficiency as provided in subdivision (a), and the executor files a petition with the Board within the time prescribed in such subdivision, the Commissioner shall have no right to determine any additional deficiency, except in the case of fraud, and except as provided in subdivision (e) of this section or in subdivision (c) of section 312. If the executor is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered, for the purposes of this subdivision or of subdivision (a) of this section, or of section 319, as a notice of a deficiency, and the executor shall have no right to file a petition with the Board of Tax Appeals based on such notice, nor shall such assessment or collection be prohibited by the provisions of subdivision (a) of this section.

(g) For the purposes of this title the date on which a decision of the Board becomes final shall be determined according to the provisions of section 1005.

* * * * *

SEC. 310. (a) Except as provided in section 311, the amount of the estate taxes imposed by this title shall be assessed within three years after the return was filed, and no proceeding in court without assess-

ment for the collection of such taxes shall be begun after the expiration of three years after the return was filed.

(b) The running of the statute of limitations provided in this section or in section 311 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under subdivision (a) of section 308) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court, and for 60 days thereafter.

SEC. 311. (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(b) Where the assessment of any tax imposed by this title or of any estate or gift tax imposed by prior Act of Congress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the executor.

(c) This section shall not bar a distraint or proceeding in court begun before the enactment of the Revenue Act of 1924; nor shall it authorize the assessment of a tax or the collection thereof by distraint or by proceeding in court (1) if at the time of the enactment of this Act such assessment, distraint, or proceeding was barred by the statutory period of limitation properly applicable thereto, unless prior to the enactment of this Act the Commissioner and the executor agreed in writing thereto, or (2) contrary to the provisions of subdivision (a) of section 308 of this Act.

SEC. 312. (a) If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall immediately assess such deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) and notice and demand shall be made by the collector for the payment thereof.

(b) If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under subdivision (a) of section 308, then the Commissioner shall mail a notice under such subdivision within 60 days after the making of the assessment.

(c) The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the executor, despite the provisions of subdivision (f) of section 308 and whether or not the executor has theretofore filed a petition with the Board of Tax Appeals. The Commissioner shall notify the Board of the amount of such assessment, if the petition is filed with the Board before the making of the assessment or is subsequently filed, and the Board shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) If the jeopardy assessment is made after the decision of the Board is rendered such assessment may be made only in respect of the deficiency determined by the Board in its decision.

(e) A jeopardy assessment may not be made after the decision of the Board has become final or after the executor has filed a petition for review of the decision of the Board.

(f) When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in subdivision (j) of this section.

(g) If the bond is given before the executor has filed his petition with the Board under subdivision (a) of section 308, the bond shall contain a further condition that if a petition is not filed within the period provided in such subdivision, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision. * * *

(i) When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

* * * * *

SEC. 318. (a) If after the enactment of this Act the Commissioner determines that any assessment should be made in respect of any estate or gift tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or by any such Act as amended, the Commissioner is authorized to send by registered mail to the person liable for such tax notice of the amount proposed to be assessed, which notice shall, for the purposes of this Act, be considered a notice under subdivision (a) of section 308 of this Act. In the case of any such determination the amount which should be assessed (whether as deficiency or additional tax or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in case of

delinquency in payment after notice and demand and the provisions prohibiting claims and suits for refund) as in the case of a deficiency in the tax imposed by this title, except that in the case of an estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, the period of limitation prescribed in section 1109 of this Act shall be applied in lieu of the period prescribed in subdivision (a) of section 310.

* * * * *

Sec. 1109 as amended by section 619 (a) of the Revenue Act of 1928.

(a) Except in the case of * * * estate, and gift taxes—

(1) Notwithstanding the provisions of section 3182 of the Revised Statutes or any other provision of law, all internal-revenue taxes shall (except as provided in paragraph (2) or (3) of this subdivision) be assessed within four years after such taxes became due, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of five years after such taxes became due.

(2) In case of a false or fraudulent return with intent to evade tax, of a failure to file a return within the time required by law, or of a willful attempt in any manner to defeat or evade tax, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(3) Where the assessment of any tax imposed by this Act or by prior Act of Congress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (A) within six years after the assessment of the tax, or (B) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer.

(b) This section shall not bar a distraint or proceeding in court begun before the enactment of the Revenue Act of 1924; nor shall it authorize the assessment of a tax or the collection thereof by distraint or by proceeding in court if at the time of the enactment of this Act such assessment, distraint, or proceeding was barred by the statutory period of limitation properly applicable thereto, unless prior to the enactment of this Act the Commissioner and the taxpayer agreed in writing thereto.

Section 402, Revenue Act of 1928. (a) Section 310 (b) of the Revenue Act of 1926 is amended to read as follows:

“(b) The running of the statute of limitations provided in this section or in section 311 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under subdivision (a) of section 308) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.”

(b) Subsection (a) of this section shall apply in all cases where the period of limitation has not expired prior to the enactment of this Act.

ART. 77. Assessments.—In any case where the Commissioner believes that the assessment or collection of a deficiency tax will be jeopardized by delay, he will make an immediate assessment thereof whether the decedent died before or after the passage of the Revenue Act of 1926. In such case the assessment may be made (1) prior to the mailing of the notice provided by section 308 (a), or (2) within 60 days after the mailing of such notice, or (3) at any time prior to the filing of a petition for a review of a decision rendered by the Board. If the jeopardy assessment is made subsequent to a decision of the Board, then the assessment is limited to the amount of the deficiency determined by the Board. Where the jeopardy assessment is made before any notice in respect of the deficiency to which the jeopardy assessment relates has been mailed under subdivision (a) of section 308, the Commissioner will mail a notice as provided by such subdivision within 60 days after the making of such jeopardy assessment.

If an amount of tax in excess of that shown upon the return is determined to be due as a result of the correction of a mathematical error appearing upon the face of the return, the executor will be duly notified and an assessment made of the tax which would have been the correct tax but for the mathematical error. The notice that the correct amount of the tax has been assessed will not be a notice of a deficiency within the meaning of subdivision (a) of section 308 or section 319 and the executor has no right to file a petition with the Board of Tax Appeals based upon such notice.

Where a petition is filed with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final will be assessed, except such portion as may have been assessed as a jeopardy assessment. If no petition is filed with the Board within the time prescribed in section 308 (a), the deficiency, notice of which has been mailed to the executor, will be assessed. Where the executor by a signed notice in writing filed with the Commissioner waives the restrictions on the assessment and collection of the whole or any part of a deficiency, assessment of such whole or part will be made immediately. (As to payment, see articles 78 to 85, inclusive.)

All assessments against executors (as to assessments against transferees and fiduciaries, see Art. 105), except in the case of a false and fraudulent return, or of a failure to file a return within the time required by law, must be made within three years after the return was filed (four years after the due date of the tax if the decedent died prior to the effective date of the Revenue Act of 1924). If notice of a deficiency is mailed in accordance with the

provisions of subdivision (a) of section 308, then the period within which assessment thereof is required to be made is extended for the period during which the Commissioner is prohibited from making the assessment and for 60 days thereafter. If a proceeding in respect of the deficiency is placed on the docket of the Board the period within which assessment is required to be made is extended until the decision of the Board becomes final and for 60 days thereafter.

In case of a false or fraudulent return with intent to evade the tax, or of a failure to file a required return, the tax may be assessed, or proceedings in court for collection may be begun without assessment, at any time.

PAYMENT OF AND RECEIPTS FOR TAXES

SEC. 305. (a) The tax imposed by this title shall be due and payable one year after the decedent's death, and shall be paid by the executor to the collector. * * *

SEC. 308. * * * (b) If the executor files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. * * *

(c) If the executor does not file a petition with the Board within the time prescribed in subdivision (a) of this section, the deficiency, notice of which has been mailed to the executor, shall be assessed, and shall be paid upon notice and demand from the collector. * * *

SEC. 313. (a) The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts. * * *

SEC. 1118. (a) Collectors may receive, * * * uncertified checks in payment of income, war-profits, and excess-profits taxes and any other taxes payable other than by stamp, during such time and under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions to the same extent as if such check had not been tendered.

ART. 78. **Payment of tax; General.**—The tax is due and must be paid within one year from the date of the decedent's death, unless an extension of time for payment thereof has been granted by the Commissioner. (See also Art. 9.) No discount will be allowed for payment in advance of the due date. The collector will grant to the person paying the tax duplicate receipts, either of which will be sufficient evidence of such payment and entitle the executor to be credited with the amount by any court having jurisdiction to audit or settle his accounts.

Following an investigation of the return, the tax liability will be determined by the Commissioner. If the amount of tax shown on the return has been paid and exceeds the amount of tax as determined, a certificate of overassessment will be prepared and issued except where such issuance is barred by the statute of limitations, or otherwise, regardless of whether or not a claim for refund of such excess payment is filed. If the amount of tax as determined exceeds the amount of tax already paid but is less than the amount shown on the return, the executor will be notified of the amount of the unpaid tax and payment thereof should be made to the collector. Where the audit of the return does not disclose a deficiency tax or overpayment the executor will be notified to that effect. Where, as a result of the audit of the return, a deficiency in respect of the tax is finally determined and such deficiency is in whole or in part assessed (see Art. 77), the executor should pay the amount of the deficiency assessed upon notice and demand from the collector, except where a stay of the collection of a jeopardy assessment is obtained by the filing of a bond (see Art. 96), or where an extension of time for payment is granted (see Art. 83). Until any tax determined by the Commissioner, including any deficiency, is assessed, the executor should reserve a sufficient portion of the estate to satisfy any unpaid assessment.

ART. 79. The executor shall pay the tax.—The statute provides that the executor shall pay the tax. This duty applies to the entire tax, regardless of the fact that the gross estate consists in part of property which will not come into his possession. Where there is no duly qualified executor or administrator, all persons in actual or constructive possession of any property of the decedent are liable for and required to pay the tax to the extent of the value of such property. See, also, Article 88. As to the personal liability of the executor, see Article 102.

ART. 80. Payment by check.—Collectors may accept uncertified checks in payment of the tax, provided such checks are collectible at par, that is, for the full amount, without any deduction for exchange or other charges. The collector will stamp upon the face of each check before deposit thereof the words "This check is in payment of an obligation to the United States and must be paid at par. No protest." This should be followed by his name and title. The day on which the check is received will be considered the date of payment so far as the taxpayer is concerned, unless the check is returned dishonored. If the bank on which a check is drawn should refuse to pay it at par, the check should be returned through the depository bank.

All expenses incident to the attempt to collect such a check and the return of it through the depository bank must be paid by the drawer of the check to the bank on which it is drawn. (See sec. 3210 of the Revised Statutes, as amended, reenacted by sec. 1128 (b) of the Revenue Act of 1926.) Where a check has been returned uncollected by the depository bank, the collector should proceed to collect the tax as though no check had been given, and the taxpayer will remain liable for payment of the tax and for all interest, legal penalties and additions, if any attach, to the same extent as though such check had not been tendered. A taxpayer who tenders a certified check in payment of the tax is not released from his obligation until the check has been paid. (See ch. 191 of the Act of Mar. 2, 1911.)

Treasury Department Circular No. 176, as amended, prescribes detailed regulations governing the deposit and collection of checks. Collectors are referred to paragraphs 13-16 and paragraph 26 thereof as to the deposit of taxpayers' checks and the handling of uncollected or lost items.

ART. 81. Payment by bonds or notes.—Payment of the tax may be made with bonds or notes of the United States issued under the provisions of the First Liberty Loan Act and the Second Liberty Loan Act, as amended, bearing interest at a higher rate than 4 per cent per annum, provided they were owned by the decedent continuously for at least six months prior to the date of his death, and upon such date constituted a part of his estate. Such bonds and notes are receivable at par and interest accrued at the time of the payment. When such bonds or notes are to be tendered in payment of the tax, a copy of Department Circular No. 225, as heretofore or hereafter amended or supplemented, should be procured and the requirements thereof carefully noted.

EXTENSION OF TIME FOR PAYMENT OF TAX

SEC. 305. * * *

(b) Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part not to exceed five years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension. * * *

(d) The time for which the Commissioner may extend the time for payment of the estate tax imposed by Title IV of the Revenue Act of 1921 shall be five years.

SEC. 308. * * * (i) Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner with the approval of the Secretary (except

where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax) may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of two years. If an extension is granted, the Commissioner may require the executor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties, as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. * * *

ART. 82. Extension of time for payment of tax shown on return.—In any case where the Commissioner finds that payment of the tax on the due date would impose undue hardship upon the estate, an extension or extensions of time will be granted for the payment of the tax for a period not to exceed in all five years from the due date, except that in cases arising under the Revenue Acts of 1916, 1917, and 1918, the extension is limited to three years from the due date. Extensions of time for tax payment will be granted only in exceptional cases, and where it is evident that the payment of the tax on or before the due date would impose upon the estate undue hardship. The term "undue hardship" means more than an inconvenience, and it must appear that substantial financial loss or sacrifice would result from making payment of the tax at the due date.

An application for an extension of time for the payment of the tax must contain sufficient information from which the Commissioner may determine whether undue hardship would result if the requested extension were refused. The extension will not be granted on a general statement of hardship, but in each case there must be furnished a statement of the specific facts, under oath, showing what, if any, financial loss or sacrifice would result if no extension were granted.

The first extension granted will be for a period of not less than six months from the due date of the tax, and no single extension for more than one year will be granted. Application for extension of time for payment should be filed with the collector, who will refer it to the Commissioner with suitable recommendations.

An extension of time to pay the tax does not relieve from the duty of filing the return on or before the date fixed by the regulations, nor will it operate to prevent the running of interest. (See Arts. 84 and 85.)

Where the executor desires to obtain an additional extension, the application therefor must be filed with the collector on or before the date of the expiration of the previous extension; otherwise the application must be denied.

The granting of an extension of time for paying the tax is discretionary with the Commissioner and such authority will be exercised under such conditions as he may deem advisable.

ART. 83. Extension of time for payment of deficiency tax.—In any case where the Commissioner finds that payment of the deficiency tax upon the date prescribed for the payment thereof would impose undue hardship upon the estate, an extension or extensions of time will be granted for payment, with the approval of the Secretary, for a period not to exceed in all two years from the date prescribed for the payment of the deficiency. This provision applies to all estates, regardless of the date of the decedent's death.

The term "undue hardship" means more than an inconvenience, and it must appear that substantial financial loss or sacrifice would result from making payment of the deficiency at the time prescribed for the payment thereof. No extension will be granted where the deficiency is due to negligence or intentional disregard of the rules and regulations, or to fraud with intent to evade the tax.

Any application for an extension of time for the payment of a deficiency must be accompanied by evidence under oath showing that undue hardship would result if the extension were refused. The extension will not be granted on a general statement of hardship, but in each case there must be furnished a statement of the specific facts showing what, if any, financial loss or sacrifice would result if no extension were granted.

As a condition to the granting of such an extension the Commissioner may require that a penal bond be furnished in an amount not exceeding double the amount of the deficiency. Where a bond is to be furnished it must be filed with the collector within 10 days after notification by the Commissioner that such bond is required, and shall be conditioned upon the payment of the deficiency in accordance with the terms of the extension granted, including interest upon the deficiency, as prescribed by the statute (see Art. 85), until the deficiency is paid, and shall be executed by a surety or sureties and shall be subject to the approval of the Commissioner. In lieu of such surety or sureties the bond may be secured by deposit of Liberty bonds or other bonds or notes of the United States in a sum equal at their par value to the amount of such bond. No single extension for more than one year will be granted. Application for extension of time for payment should be filed with the collector. The collector will refer the application to the Commissioner with suitable recommendations.

Where the executor desires to obtain an additional extension, the application therefor must be filed with the collector on or before the date of the expiration of the previous extension; otherwise the application must be denied.

An extension of time to pay the deficiency will not operate to prevent the running of interest. (See Art. 85.) No extension of time

for paying a deficiency will be granted until after the assessment thereof and notice and demand for payment has been made by the collector. Consequently no application for extension of time for payment of a deficiency, or any part thereof, should be made prior to the receipt of such notice and demand.

The granting of an extension of time for paying the deficiency is discretionary with the Commissioner, and such authority will be exercised under such conditions as he may deem advisable.

INTEREST ON TAX

SEC. 309. (a) (1) Where the amount determined by the executor as the tax imposed by this title, or any part of such amount, is not paid on the due date of the tax, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 1 per centum a month from the due date until it is paid.

(2) Where an extension of time for payment of the amount so determined as the tax by the executor has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under subdivision (c) of section 305, is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subdivision, interest at the rate of 1 per centum a month shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid. * * *

SEC. 305. * * * (b) Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part not to exceed five years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

(c) If the time for the payment is thus extended there shall be collected, as a part of such amount, interest thereon at the rate of 6 per centum per annum from the expiration of six months after the due date of the tax to the expiration of the period of the extension. * * *

* * * * *

SEC. 308. * * * (h) Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the due date of the tax to the date the deficiency is assessed, or, in the case of a waiver under subdivision (d) of this section, to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier.

(i) * * * the Commissioner * * * may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of two years. * * * In such case there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. If the part

of the deficiency the time for payment of which is so extended is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 1 per centum a month for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period.

(j) The 50 per centum addition to the tax provided by section 3176 of the Revised Statutes, as amended, shall, when assessed after the enactment of this Act in connection with an estate tax, be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of subdivision (h) of this section shall not be applicable.

SEC. 309. * * * (b) Where a deficiency, or any interest assessed in connection therewith under subdivision (h) of section 308, or any addition to the tax provided for in section 3176 of the Revised Statutes, as amended, is not paid in full within 30 days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 1 per centum a month from the date of such notice and demand until it is paid.

(c) If a bond is filed, as provided in section 312, the provisions of subdivision (b) of this section shall not apply to the amount covered by the bond.

* * * * *
SEC. 312. * * * (f) When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in subdivision (j) of this section.

(g) If the bond is given before the executor has filed his petition with the Board under subdivision (a) of section 308, the bond shall contain a further condition that if a petition is not filed within the period provided in such subdivision, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision. * * *

(i) When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed,

then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

(j) In the case of the amount collected under subdivision (i) there shall be collected at the same time as such amount, and as a part of the tax, interest at the rate of 6 per centum per annum upon such amount from the date of the jeopardy notice and demand to the date of notice and demand under subdivision (i) of this section, or, in the case of the amount collected in excess of the amount of the jeopardy assessment, interest as provided in subdivision (h) of section 308. If the amount included in the notice and demand from the collector under subdivision (i) of this section is not paid in full within 30 days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 1 per centum a month from the date of such notice and demand until it is paid. * * *

ART. 84. Interest on tax disclosed on return.—Where any portion of the tax indicated by the return is not paid on or before the due date, and no extension of time for payment thereof has been granted, such unpaid portion bears interest at the rate of 1 per cent a month from the due date until payment is received by the collector.

Where, however, an extension of time has been granted for paying any portion of the tax shown upon the return, the statute requires the imposition of interest upon the amount, the time for payment of which has been extended, at the rate of 6 per cent per annum from the expiration of six months after the due date of the tax (one year after the date of the decedent's death) to the expiration of the period of the extension. If the amount of tax, the time for payment of which has been extended, and the interest thereon from six months after the due date of the tax, are not paid in full prior to the expiration of the extension, or extensions, granted by the Commissioner, interest accrues upon the total unpaid amount (tax and interest), at the rate of 1 per cent a month from the date of the expiration of the extension, or extensions, until payment is received by the collector. (For an example of computation of interest at 1 per cent a month, see Art. 85.)

In any case where an extension of time is granted for paying the tax, interest will be added to the amount, the time for payment of which has been extended, from six months after the due date until the expiration of the period of extension, or extensions, even though payment may be made before the expiration thereof.

ART. 85. Interest on deficiency tax.—The statute provides that the deficiency shall bear interest at the rate of 6 per cent per annum from the due date for payment of the tax (one year after date of decedent's death) to the date the deficiency is assessed, except in the case of a waiver of the restrictions against the assessment and collection of the deficiency, and that such interest shall be assessed

at the same time as the deficiency of which it becomes an integral part. The deficiency in respect to which the restrictions against the assessment and collection are waived under section 308 (d) bears interest at the rate of 6 per cent per annum from the due date of the tax to the 30th day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier. The term "deficiency" includes any tax resulting from the correction of a mathematical error appearing upon the face of a return. (See second paragraph of Art. 77.)

Such portion of the deficiency assessed, except a deficiency with respect to which a jeopardy assessment is made and a petition to the Board is filed, as is not paid within 30 days from the date of notice and demand by the collector, bears interest at the rate of 1 per cent a month from the date of such notice and demand until payment is received by the collector unless, however, an extension for the payment thereof has been granted. Where an extension of time for paying the deficiency, or any portion thereof, has been granted the statute requires the imposition of interest upon the amount, the time for payment of which has been extended, at the rate of 6 per cent per annum for the period of the extension, and if not paid on or before the expiration of the extension or extensions interest accrues upon the total unpaid amount (tax, interest, or additions thereto) at the rate of 1 per cent a month from the date of the expiration of the extension until payment is received by the collector.

In any case where an extension of time is granted for paying the deficiency, interest will be added to the amount, the time for payment of which has been extended, for the period of the extension, or extensions, even though payment may be made before the expiration thereof.

Example: A deficiency in the tax amounting to \$500 was determined and assessment thereof made on the 15th day of July; the due date of the tax being March 15 preceding. The amount of the assessment in this instance is \$500, plus interest thereon at 6 per cent per annum from and including March 16 to and including July 15, amounting to \$10.03, computed upon the basis of 365 days to the year (or 366 days in a leap year), or a total assessment of \$510.03, which thereupon becomes the amount of the deficiency. The date of the notice and demand by the collector for payment was August 1 following the assessment. Within 30 days thereafter \$255.02 was paid and request was made for an extension of time for paying the balance of the deficiency (\$255.01), and an extension from August 1 to and including February 1 was granted for the payment thereof. This amount bears interest at 6 per cent per annum for the

period of the extension, amounting to \$7.71. The remaining liability is, therefore, \$262.72 (though paid in full prior to the expiration of the extension). The amount of liability in this instance was not paid until August 1 following the expiration of the extension. Inasmuch as the \$255.01, the time for payment of which was extended, was not paid until after the expiration of the extension, interest accrued thereon at the rate of 1 per cent a month for six months, amounting to \$15.30. (The term "month" means calendar month; i. e., a period terminating with the day of the succeeding month numerically corresponding to the day preceding the beginning of the period. If there is no such corresponding day of the succeeding month, the last day of such succeeding month is the last day of the period. Where interest at the rate of 1 per cent a month is to be computed for a period of one or more months and a fraction of a month, it should be computed for the number of whole months, and then for the fraction of a month upon the basis of the number of days in the month which includes such fraction. Thus, for example, the elapsed period from February 14 to March 13, both dates included, is one month, and the period from February 14 to March 11, both dates included, is twenty-six twenty-eighths of a month, except that if the year be a leap year the period is twenty-seven twenty-ninths of a month.) The amount due on August 1 was, therefore, \$278.02 $\$255.01 + 7.71 + 15.30$).

Any addition to the tax resulting from the imposition of an ad valorem penalty under the provisions of section 3176, Revised Statutes, is subject to the same provisions of law relating to the assessment, collection, and the accrual of interest, as the deficiency tax, except that such addition to the tax is not subject to any interest between the due date for payment of the tax (one year after date of decedent's death) and the date of the assessment thereof.

Where a stay of the collection of a jeopardy assessment of a deficiency tax, or any addition to the tax resulting from the imposition of an ad valorem penalty, is obtained and a petition for a redetermination of the deficiency is filed with the Board of Tax Appeals, interest accrues on such unpaid portion of the deficiency or penalty, if any, determined by a decision of the Board which is made final, at the rate of 6 per cent per annum from the date of the notice and demand from the collector following the jeopardy assessment to the date of the notice and demand by the collector subsequent to the final action taken on the petition filed with the Board. If the amount which the Board determines should have been assessed is not paid in full within 30 days after such notice and demand subsequent to the decision of the Board which has become final, interest accrues upon the unpaid amount at the rate of 1 per cent

a month from the date of such notice and demand until it is paid. If the amount (exclusive of any ad valorem penalty) determined by the Board as the amount which should have been assessed is greater than the amount actually assessed the difference bears interest at the rate of 6 per cent per annum from the due date of the tax until assessment of such difference. Where the collection of the jeopardy assessment is stayed, and no petition is filed with the Board for a redetermination of the deficiency, interest accrues upon the deficiency so assessed at the rate of 6 per cent per annum from the date of the jeopardy notice and demand to the date of the notice and demand made by the collector after the expiration of the 60 days from the mailing by the Commissioner of the notice of the deficiency, and if not paid within 30 days after such second notice and demand by the collector interest accrues at the rate of 1 per cent a month from the date of such second notice and demand until paid.

COLLECTION OF TAX

SEC. 314. (a) If the tax herein imposed is not paid on or before the due date thereof the collector shall, upon instruction from the Commissioner, proceed to collect the tax under the provisions of general law, or commence appropriate proceedings in any court of the United States having jurisdiction, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. This subdivision in so far as it applies to the collection of a deficiency shall be subject to the provisions of section 308.

ART. 86. Remedy not exclusive.—The remedy by action, here provided, is not exclusive. For other available remedies for the collection of the tax, see Article 105.

REIMBURSEMENT

SEC. 314. * * * (b) If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution. If any part of the gross

estate consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds, in excess of \$40,000, of such policies bear to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio.

ART. 87. Right to reimbursement not enforceable by Commissioner.—Where any portion of the tax is paid by or collected out of that part of the estate passing to, or in the possession of, any person other than the duly qualified executor or administrator, such person may be entitled to reimbursement, either out of the undistributed estate or by contribution from other beneficiaries whose shares or interests in the estate would have been reduced had the tax been paid before distribution of the estate, or whose shares or interests are subject either to an equal or prior liability for the payment of taxes, debts, or other charges against the estate. The executor is entitled to require beneficiaries under insurance policies to bear their proportion of the tax. These provisions, however, are not designed to curtail the right of the Commissioner to collect the tax from any person, or out of any property, liable therefor. The Commissioner can not be required to apportion the tax among the persons liable, nor to enforce any right to reimbursement or contribution.

LIEN

SEC. 315 as amended by section 613 (b) of the Revenue Act of 1928.

(a) Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

(b) If (1) the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth) or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

SEC. 313. * * * (b) If the executor makes written application to the Commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Commissioner (as soon as possible, and in any event within one year after the making of such application, or, if the application is made before the return is filed, then within one year after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in section 310) shall notify the executor of the amount of the tax. The executor, upon payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

(c) The provisions of subdivision (b) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless the title to such part of the gross estate has passed to a bona fide purchaser for value, in which case such part shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

Revised Statutes, section 3186 as amended by section 613 (a), Revenue Act of 1928. * * * "(c) Subject to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, the collector of internal revenue charged with an assessment in respect of any tax—

"(1) May issue a certificate of release of the lien if the collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable.

"(2) May issue a certificate of release of the lien if there is furnished to the collector and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regulations.

"(3) May issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon such property.

"(d) A certificate of release or of partial discharge issued under this section shall be held conclusive that the lien upon the property covered by the certificate is extinguished.

"(e) The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation provide for the acceptance of a single bond complying both with the requirements of section 272 (j) of the Revenue Act of 1928 (relating to the extension of time for the payment of a deficiency), or of any similar provisions of any prior law, and the requirements of subsection (c) of this section."

* * * * *

ART. 88. Property subject to lien.—This lien attaches to every part of the gross estate, whether or not the property comes into the pos-

session of the duly qualified executor or administrator. It attaches to the extent of the tax shown to be due by the return and of any deficiency tax found to be due upon review and audit.

The lien upon the entire property constituting the gross estate continues for a period of 10 years after the decedent's death, except—

(1) Where the tax is paid in full before the expiration of such period.

(2) Such portion of the gross estate as is used for the payment of charges against the estate and expenses of its administration allowed by any court having jurisdiction thereof.

(3) Such portion of the gross estate as has passed to a bona fide purchaser for value after payment of the full amount of tax determined by the Commissioner pursuant to a request of the executor for discharge from personal liability, as authorized by section 313 (b) and (c) (see Art. 67), but there is substituted a like lien upon the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

(4) Such property as was received from the decedent as a transfer by trust or otherwise in contemplation of or intended to take effect in possession or enjoyment at or after his death (except where the transfer was a bona fide sale for an adequate and full consideration in money or money's worth), and was sold by the transferee to a bona fide purchaser for such a consideration. In such case the lien attaches to all the property of the transferee except such thereof as may be sold to a bona fide purchaser for such a consideration.

(5) Where the collector issues his certificate releasing such lien. (See Art. 89.)

ART. 89. Release of lien.—The statute provides that subject to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, the Collector of Internal Revenue charged with an assessment in respect of any tax may issue a certificate of release of the lien after the collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable; that the collector may issue a certificate of release of the lien if there is furnished to the collector and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law, including extensions granted, provided that the bond is in accordance with such requirements relating to the terms, conditions, and form of the bond and sureties thereon as may be specified in the regulations prescribed by the Commissioner; and that the collector may issue a

certificate of partial discharge of any part of the property subject to the lien if the collector is satisfied that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the tax liability remaining unsatisfied, together with the amount of all prior liens upon such property. The regulations provided for will be separately promulgated.

PENALTIES

SEC. 320. (a) Whoever knowingly makes any false statement in any notice or return required to be filed under this title shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both.

(b) Whoever fails to comply with any duty imposed upon him by section 304, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Commissioner or any collector or law officer of the United States or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this title, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

SEC. 1114. (a) Any person required under this Act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this Act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution. * * *

(e) Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

(f) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

SEC. 1103. Section 3176 of the Revised Statutes, as amended, is amended to read as follows: "Sec. 3176 * * * In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 per centum of its amount.

"The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax."

Section 616, Revenue Act of 1928. Any person who, in connection with any compromise under section 3229 of the Revised Statutes, as amended, or offer of such compromise, or in connection with any closing agreement under section 606 of this Act, or offer to enter into any such agreement, willfully (1) conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or (2) receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax, shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

ART. 90. **Nature of penalties.**—Two kinds of penalties are provided for delinquency with respect to the duties imposed by the statute:

- (1) A specific penalty, to be recovered by suit, unless previously paid or adjusted by the acceptance of an offer in compromise; and
- (2) A penalty of a certain percentage of the tax, to be added to and collected in the same manner as the tax.

In any case where more than one penalty is provided the Government may assert any one or more thereof.

ART. 91. Penalties for false or fraudulent notice or return.—Where any statement in the notice or return is knowingly false, the person making it is subject to a penalty not exceeding \$5,000, or imprisonment for not exceeding one year, or both, and for a false or fraudulent return, 50 per cent will be added to the amount of the tax. Any person required to file any notice or make a return who willfully fails to do so at the time required shall be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

Any person who willfully aids or assists in the preparation or presentation of a false or fraudulent notice or return, or procures, counsels, or advises the preparation or presentation of such a notice or return, whether such falsity or fraud is with or without the knowledge or consent of the person required to make the notice or return, will be guilty of a felony and, upon conviction thereof, fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

ART. 92. Penalty for failure to file notice or return.—For failure to file the notice or return within the time prescribed, the person in default is subject to a penalty not exceeding \$500; and, for failure to file the return within the time prescribed, 25 per cent will be added to the amount of the tax, except that when a return is filed after such time and it is shown that the failure so to file was due to a reasonable cause and not to willful neglect no such addition will be made to the tax.

The ad valorem penalty of 25 per cent of the tax will not be asserted where an extension of time for filing the return was granted by the collector pursuant to the provisions of Article 68, and the return is actually filed within the period of extension granted.

ART. 93. Penalty for failure to pay tax, exhibit property, keep or exhibit records, etc., and for concealment of assets.—Any person in possession or control of any record, file, or paper, containing or supposed to contain information relating to the estate, or having in his possession or control property comprised in the gross estate of the decedent, who fails to exhibit the same upon the request of the Commissioner or any collector or law officer of the United States, or his duly authorized deputy or agent, in the performance of his duties, or having knowledge or information of any fact or facts of a material bearing upon the liability, or the extent of liability, of the estate to the tax, who fails to make disclosure thereof upon request of the Commissioner or any revenue agent or inspector designated by him for that purpose, is liable to a penalty not to exceed \$500, to be

recovered by civil action. Such a request must be granted whether or not he believes that a compliance therewith is material.

Any person required to pay the tax, keep any records, or supply any information, for the purpose of the computation, assessment, or collection of the tax, who willfully fails to pay such tax, keep such records, or supply such information, as required by the law or regulations, shall, in addition to other penalties, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

Any person who willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

Any person who in connection with any compromise entered into or offer made under the provisions of section 3229 of the Revised Statutes as amended, or, who in connection with any closing agreement under section 606 of the Revenue Act of 1928, or the offer to enter into any such agreement, willfully conceals from any officer or employee of the United States any property belonging to the estate, or any person liable in respect of the tax, or receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement, relating to the estate or its value or the financial condition of any person liable in respect of the tax, shall, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both.

ART. 94. Penalty for assisting, procuring, or advising the preparation or presentation of false or fraudulent documents.—Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent affidavit, claim, or document, shall, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such affidavit, claim, or document, be guilty of a felony, and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

ABATEMENT AND STAY OF COLLECTION OF JEOPARDY ASSESSMENT

SEC. 312. * * * (f) When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not

exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in subdivision (j) of this section.

(g) If the bond is given before the executor has filed his petition with the Board under subdivision (a) of section 308, the bond shall contain a further condition that if a petition is not filed within the period provided in such subdivision, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision.

(h) Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The executor shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the executor, be proportionately reduced. If the Board determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Board is rendered the bond shall, at the request of the executor, be proportionately reduced.

(i) When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector. * * *

(k) No claim in abatement shall be filed in respect of any assessment made after the enactment of this Act in respect of any estate or gift tax.

ART. 95. Claim for abatement.—No claim for abatement may be filed in respect of any assessment made after the effective date of the Revenue Act of 1926. The amount of any assessment directed to be abated by the statute as the result of a decision of the Board of Tax Appeals which has become final and all overassessments determined as a result of audit or examination of returns will be abated by the Commissioner without action on the part of the executor.

ART. 96. Collection of jeopardy assessment stayed by filing bond.—Where a jeopardy assessment has been made, the executor, within 30 days after notice and demand from the collector for payment of

the amount of the jeopardy assessment may obtain a stay of collection of the whole, or any part, of the amount of such assessment by filing with the collector a bond in such amount not exceeding double the amount as to which the stay is desired, and with such sureties as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated as a result of a decision of the Board which has become final, together with the interest thereon, as provided in the statute. (See Art. 85.) In lieu of such sureties there may be deposited Liberty Bonds or other bonds and notes of the United States in a sum equal at their par value to the amount of such bond. The petition with the Board of Tax Appeals for redetermination of the deficiency in respect to which the jeopardy assessment was made must be filed within 60 days (not counting Sunday as the sixtieth day) after the mailing by the Commissioner of the notice of the final determination of the deficiency. (See Art. 76.) If the bond is given before the petition is filed with the Board, the bond shall contain a further condition that if a petition is not filed within the 60 days, then the amount, the collection of which is stayed by the bond, shall be paid on notice and demand at any time after the expiration of such 60-day period, together with interest thereon at the rate of 6 per cent per annum from the date of the jeopardy notice and demand made by the collector to the date of notice and demand made after the expiration of the 60-day period.

ART. 97. Accrual of interest as affected by the stay of the collection of a jeopardy assessment.—For rules relating to the accrual of interest where the collection of a jeopardy assessment is stayed by the filing of a bond, see Article 85.

ART. 98. Limitation of time to file bond to stay collection of jeopardy assessment.—If it is desired to stay the collection of the whole, or any part, of the amount in respect to which a jeopardy assessment has been made, the bond referred to in Article 96 must be filed with the collector within 30 days after notice and demand by the collector for the payment of the amount of the jeopardy assessment.

REFUNDS

SEC. 319. (a) If the Commissioner has mailed to the executor a notice of deficiency under subdivision (a) of section 308 and if the executor after the enactment of this Act files a petition with the Board of Tax Appeals within the time prescribed in such subdivision, no refund in respect of the tax shall be allowed or made and no suit for the recovery of any part of such tax shall be instituted in any court, except—

(1) As provided in subdivision (c) of this section or in subdivision (i) of section 312 or in subdivision (b), (e), or (g) of section 318 or in subdivision (d) of section 1001; and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the Board which has become final; and

(3) As to any amount collected after the statutory period of limitations upon the beginning of distraint or a proceeding in court for collection has expired; but in any such claim for refund or in any such suit for refund the decision of the Board which has become final, as to whether such period had expired before the notice of deficiency was mailed, shall be conclusive.

(b) All claims for the refunding of the tax imposed by this title alleged to have been erroneously or illegally assessed or collected must be presented to the Commissioner within three years next after the payment of such tax.

(c) If the Board finds that there is no deficiency and further finds that the executor has made an overpayment of tax, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Board has become final, be credited or refunded to the executor as provided in section 3220 of the Revised Statutes, as amended. Such refund shall be made either (1) if claim therefor was filed within the period of limitation provided for by law, or (2) if the petition was filed with the Board within four years after the tax was paid, or, in the case of a tax imposed by this title, within three years after the tax was paid.

* * * * *

SEC. 325. Any tax that has been paid under the provisions of Title III of the Revenue Act of 1924 prior to the enactment of this Act in excess of the tax imposed by such title as amended by this Act shall be refunded without interest.

SEC. 1106. * * *

(b) If after a determination and assessment in any case the taxpayer has paid in whole any tax or penalty, or accepted any abatement, credit, or refund based on such determination and assessment, and an agreement is made in writing between the taxpayer and the Commissioner, with the approval of the Secretary, that such determination and assessment shall be final and conclusive, then (except upon a showing of fraud or malfeasance or misrepresentation of fact materially affecting the determination or assessment thus made) (1) the case shall not be reopened or the determination and assessment modified by any officer, employee, or agent of the United States, and (2) no suit, action, or proceeding to annul, modify, or set aside such determination or assessment shall be entertained by any court of the United States.

Section 606, Revenue Act, 1928. (a) **Authorization.**—The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commissioner) is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal-revenue tax for any taxable period ending prior to the date of the agreement.

(b) **Finality of agreements.**—If such agreement is approved by the Secretary, or the Undersecretary, within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and

conclusive, and except upon a showing of fraud or malfeasance or misrepresentation of a material fact—

(1) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

(c) Section 1106(b) of the Revenue Act of 1926 is repealed, effective on the expiration of 30 days after the enactment of this Act, but such repeal shall not affect any agreement made before such repeal takes effect.

Revised Statutes, section 3220 as amended by section 3, Act of May 29, 1928 [Public No. 611—70th Cong.]. The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal-revenue taxes collected by him, with the cost and expense of suit; also all damages and cost recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress, by internal-revenue districts and alphabetically arranged, of all refunds in excess of \$500, at the beginning of each regular session of Congress of all transactions under this section.

Revised Statutes, section 3228 as amended by section 619 (c), Revenue Act, 1928. (a) All claims for the refunding or crediting of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes, be presented to the Commissioner of Internal Revenue within four years next after the payment of such tax, penalty, or sum.

(b) Except as provided in section 284 of the Revenue Act of 1926, claims for credit or refund (other than claims in respect of taxes imposed by the Revenue Act of 1916, the Revenue Act of 1917, or the Revenue Act of 1918) which at the time of the enactment of the Revenue Act of 1921 were barred from allowance by the period of limitation then in existence, shall not be allowed.

Section 607, Revenue Act, 1928. Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid (whether before or after the enactment of this Act) after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim.

Section 608, Revenue Act, 1928. A refund of any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) made after the enactment of this Act, shall be considered erroneous—

(a) if made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed; or

(b) in the case of a claim filed within the proper time and disallowed by the Commissioner after the enactment of this Act, if the refund was made after the expiration of the period of limitation for filing suit, unless—

(1) within such period suit was begun by the taxpayer, or

(2) within such period, the taxpayer and the Commissioner agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of final decision in one or more named cases then pending before the United States Board of Tax Appeals or the courts.

Section 610, Revenue Act, 1928. (a) Any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) refund of which is erroneously made, within the meaning of section 608, after the enactment of this Act, may be recovered by suit brought in the name of the United States, but only if such suit is begun within two years after the making of such refund.

(b) Any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) which has been erroneously refunded (if such refund would not be considered as erroneous under sec. 608) may be recovered by suit brought in the name of the United States, but only if such suit is begun before the expiration of two years after the making of such refund or before May 1, 1928, whichever date is later.

Section 611, Revenue Act, 1928. If any internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) was, within the period of limitation properly applicable thereto, assessed prior to June 2, 1924, and if a claim in abatement was filed, with or without bond, and if the collection of any part thereof was stayed, then the payment of such part (made before or within one year after the enactment of this Act) shall not be considered as an overpayment under the provisions of section 607, relating to payments made after the expiration of the period of limitation on assessment and collection.

Section 612, Revenue Act, 1928. Section 1106 (a) of the Revenue Act of 1926 is repealed as of February 26, 1926.

ART. 99. Claim for refund.—A claim for refund of estate tax, or for refund of interest or penalties, erroneously or illegally collected should be made on the form prescribed by the Treasury Department (Form 843), and should be filed with the collector of internal revenue, although a claim will not be considered defective solely by reason of the fact that it is not made on the form or that it is filed with the Commissioner of Internal Revenue. The claim must set forth in detail and under oath each ground upon which a refund is claimed, and facts sufficient to apprise the Commissioner of the exact basis thereof. Any claim which does not comply with the requirements

of the preceding sentence will not be considered for any purpose as a claim for refund.

Claims for refund of estate tax imposed by the Revenue Act of 1926 must be filed within three years next after the payment of the amount sought to be refunded, except that a claim may thereafter be filed in any case for the refund of an overpayment computed in accordance with a decision of the Board of Tax Appeals which has become final provided the petition for redetermination of the deficiency was filed with the Board within three years next after payment of the tax. Where, however, the tax was imposed by the Estate Tax Title of any Revenue Act prior to the Revenue Act of 1926 the period within which the claim must be filed is four years, except that a claim may thereafter be filed for a refund of an overpayment determined by the Board as a result of a petition filed with the Board after the enactment of the Revenue Act of 1926 and within four years from date of payment. Any tax imposed by Title III of the Revenue Act of 1924 which was paid prior to the enactment of the Revenue Act of 1926 in excess of the amount of tax imposed by the Revenue Act of 1924 as amended by the Revenue Act of 1926 is not deemed to have been erroneously or illegally collected and hence a claim for the refund of such excess is not subject to the four-year limitation set out in the next preceding sentence. Furthermore, the four-year limitation of time within which claims for refund must be filed does not apply in a case where a refund is sought under the provisions of the last paragraph of sections 401 and 403 of the Revenue Act of 1921.

The amount of the refund shall not exceed the portion of the tax paid during the three or four year period, as the case may be, immediately preceding the filing of the claim, or the filing of the petition with the Board of Tax Appeals. The collector will thereafter present the claim to the Commissioner for consideration. Upon receipt, by the Commissioner, of any claim for refund, other than a claim for refund of an overpayment determined in accordance with a decision of the Board of Tax Appeals which has become final, the return of the estate will be reaudited and only the excess payment determined by the Commissioner as a result of consideration of the claim and reaudit will be refunded. If the reaudit reveals that the tax has been underpaid, the amount of such underpayment will be collected unless the collection thereof is barred.

Except a claim for refund of an overpayment computed in accordance with a decision of the Board of Tax Appeals which has become final, the burden of proof rests upon the claimant and all facts relied upon in support of the claim must be clearly set forth under oath. Every affidavit, argument, brief, or statement of facts, prepared or filed by an attorney or agent as argument or evidence in the matter of a protest, must have therein a statement signed by such

attorney or agent showing whether or not he prepared such document and whether or not the attorney or agent knows of his own knowledge that the facts contained therein are true. Where there is a hearing, should the executor not appear in person, his representative who appears must present a properly executed power of attorney and be enrolled to practice before the Treasury Department. (See Art. 74.) With all claims there should be submitted :

(1) Where the claim is made by an executor or administrator, a certificate of the court must be furnished showing that the appointment remains in full force and effect.

(2) Where the executor or administrator has been discharged and no administrator de bonis non has been appointed and qualified, there should be submitted, in lieu of the certificate above mentioned, (a) a certified copy of the court order granting the discharge, and (b) a certified copy of the order of distribution, or, if such order does not fully disclose the identity of the person or persons entitled to receive any amount that may be refunded and the percentage or proportion thereof to which each, if more than one, is entitled, there should be submitted a certified copy of the decedent's will, if any, and such further proof as may be requisite to establish both the identity of such person or persons and the percentage or proportion of the amount sought to be refunded to which each, where there are more than one, is entitled.

(3) Where a claim is filed after the administration of the estate has been closed, and is signed by one only, or by less than all, of a number of beneficiaries entitled to share in the refund, or is signed by a person acting as attorney or agent for the interested parties, there must accompany the claim, in addition to the proof required in paragraph (2) above, a power of attorney, duly executed by all beneficiaries entitled to any portion of the repayment, authorizing the claimant or claimants to present the matter before the Bureau.

If upon audit of the return filed by the executor the Commissioner determines that an overassessment has been made on account of the tax, a certificate of overassessment will be prepared and issued except in cases where such issuance is barred by the statute of limitations, or otherwise, even though claim for refund of such excess payment has not been filed. The certificate of overassessment when issued will be addressed to the executor and the executor will be required to file the documentary evidence, as set out above, identifying the person or persons entitled to receive the refund.

A refund is erroneous if made after the enactment of the Revenue Act of 1928, when made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed. In the case where a claim was filed within the proper time and such claim was disallowed by the Commissioner after the enact-

ment of the Revenue Act of 1928, and the period of limitation for filing suit by the executor had expired prior to the making of the refund, a refund based upon such claim is erroneous unless suit was begun by the executor within the period of limitation for filing suit, or unless within such period the executor and the Commissioner agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of final decision of one or more named cases then pending before the Board of Tax Appeals or the courts. Erroneous refunds, as above described, may be recovered by suit brought in the name of the United States within two years after the making of such refunds. An erroneous refund if not considered as erroneous under Section 608 (see page 95) may be recovered in the same manner if the suit is begun within two years after the making of such refund or before May 1, 1928, whichever date is later.

A claim for the payment of a judgment rendered against a Collector of Internal Revenue representing Federal estate tax, penalties, or other sums collected in connection therewith should be made on Form 843 and filed with the Commissioner of Internal Revenue, Washington, D. C. The claimant should state the names of all parties to the action, the date of its commencement, the date of the judgment, the court in which it was recovered, its amount, and the fact that the action related to Federal estate tax or interest or penalties in connection therewith. To the claim there should be annexed two certified copies of the final judgment, a certificate of probable cause (see Section 989 of the Revised Statutes) and, if refund is claimed, an itemized bill of the costs paid receipted by the clerk or other proper officer of the court.

A claim for the payment of a judgment rendered against the United States representing Federal estate tax, penalties, or other sums collected in connection therewith should be made on Form 843 in the manner prescribed in the preceding paragraph, except that—

- (a) a certificate of probable cause is not required,
- (b) the claims shall be executed in duplicate, and
- (c) in the case of a judgment rendered by the Court of Claims there may be submitted, in place of a certified copy of the final judgment, a certificate of the judgment issued by the Clerk of the Court and two copies of the court's opinion, if any was rendered.

INTEREST ON REFUNDS

Section 614, Revenue Act of 1928. (a) Interest shall be allowed and paid upon any overpayment in respect of any internal-revenue tax, at the rate of 6 per cent per annum, as follows:

* * * * *

(2) In the case of a refund, from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days, such date to be determined by the Commissioner.

* * * * *

(c) Section 1116 of the Revenue Act of 1926 is repealed.

(d) Subsections (a), (b), and (c) shall take effect on the expiration of 30 days after the enactment of this Act, and shall be applicable to any credit taken or refund paid after the expiration of such period, even though allowed prior thereto.

ART. 100. Payment of claims and interest.—Under the law warrants in payment of claims allowed can only be drawn payable to the person or persons entitled to the proceeds, and consequently can not be drawn payable to attorneys or agents. If the claimants are indebted to the United States for taxes, such taxes must be paid before the warrants are delivered. (Act of March 3, 1875 (18 Stats. 481).)

Upon the allowance of a claim for refund of any tax or penalty paid the statute provides for the payment of interest upon the total amount of such refund at the rate of 6 per cent per annum from the date such tax or penalty was paid to a date preceding the date of the refund check by not more than 30 days, such date to be determined by the Commissioner.

POWER TO COMPROMISE OR REMIT PENALTIES

Revised Statutes, Sec. 3229 (Comp. Sts., 1916, Sec. 5952). The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws instead of commencing suit thereon; and, with the advice and consent of the said Secretary and the recommendation of the Attorney General, he may compromise any such case after a suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of the Commissioner the opinion of the Solicitor of Internal Revenue, or of the officer acting as such, with his reasons therefor, with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise.

ART. 101. Power to compromise or remit.—The Commissioner, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal-revenue laws instead of commencing suit thereon, and with the advice and consent of the Secretary, and upon the recommendation of the Attorney General, may compromise any such case after suit thereon has been commenced by the United States. Accordingly, the power to compromise extends to (a) both civil and criminal cases; (b) cases whether before or after suit; and (c) both taxes and penalties, except that taxes legally due from a solvent taxpayer may not be com-

promised. Refunds can not be made of accepted offers in compromise in cases where it is subsequently ascertained that no violation of law was involved.

PERSONAL LIABILITY OF EXECUTOR

Revised Statutes, Sec. 3467 (Comp. Sts., 1916, Sec. 6373). Every executor, administrator, or assignee, or other person, who pays any debts due by the person or estate from [for] whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

ART. 102. Extent of liability.—The executor is personally liable for the payment of the tax if he pays any debts due by the decedent; or his estate, before he pays the tax. Where no executor or administrator has been appointed, every person in actual or constructive possession of any property of the decedent is liable for the tax as an executor.

EXAMINATION OF RECORDS AND TAKING OF TESTIMONY

SEC. 1104 as amended by **Sec. 618, Revenue Act 1928**, The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

SEC. 1122. (a) If any person is summoned under this Act to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(b) The district courts of the United States at the instance of the United States are hereby invested with such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the provisions of this Act. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such provisions.

(c) The paragraph added by section 1310 of the Revenue Act of 1921 at the end of paragraph Twentieth of section 24 of the Judicial

Code, relating to the jurisdiction of districts courts, as amended, is reenacted without change, as follows:

"Concurrent with the Court of Claims, of any suit or proceeding, commenced after the passage of the Revenue Act of 1921, for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected, under the internal-revenue laws, even if the claim exceeds \$10,000, if the collector of internal revenue by whom such tax, penalty, or sum was collected is dead or is not in office as collector of internal revenue at the time such suit or proceeding is commenced."

ART. 103. Securing evidence—Taking testimony.—In order to ascertain the correctness of a return, or to make a return where none has been made, the Commissioner has power to require the attendance, and to take the testimony, of the person rendering the return, or any officer or employee of such person, or any other person having knowledge in the premises. Such persons may be required to produce any relevant book, paper, or other record. This power may be exercised by any revenue agent or inspector designated for the purpose. (For penalties, see Art. 93.)

ART. 104. Power to compel compliance.—Where any person is summoned to appear and testify, or to produce books, papers, or other data, the District Court of the United States for the district in which such person resides has power to compel the giving of the testimony, the production of the books, papers, or data, and to issue any appropriate process, writ, or order.

REMEDIES FOR COLLECTION

SEC. 1100. All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act.

SEC. 311. * * * (b) Where the assessment of any tax imposed by this title or of any estate or gift tax imposed by prior Act of Congress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the executor.

SEC. 316. (a) The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this title (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) The liability, at law or in equity, of a transferee of property of a decedent or donor, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed by this title or by any prior estate tax Act or by any gift tax Act.

(2) The liability of a fiduciary under section 3467 of the Revised Statutes in respect of the payment of any such tax from the estate of the decedent or donor.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the executor or donor; or

(2) If the period of limitation for assessment against the executor expired before the enactment of this Act but assessment against the executor was made within such period,—then within six years after the making of such assessment against the executor, but in no case later than one year after the enactment of this Act.

(3) If a court proceeding against the executor or donor for the collection of the tax has been begun within either of the above periods,—then within one year after return of execution in such proceeding.

(c) The running of the period of limitation upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under subdivision (a) of section 308 to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary, and for 60 days thereafter.

(d) This section shall not apply to any suit or other proceeding for the enforcement of the liability of a transferee or fiduciary pending at the time of the enactment of this Act.

(e) As used in this section the term "transferee" includes heir, legatee, devisee, and distributee.

Section 403, Revenue Act of 1928. (a) Section 316 (c) of the Revenue Act of 1926 is amended to read as follows:

"(c) The running of the statute of limitations upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under subdivision (a) of section 308 to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter."

(b) Subsection (a) of this section shall apply in all cases where the period of limitation has not expired prior to the enactment of this Act.

Section 604, Revenue Act, 1928. No suit shall be maintained in any court for the purpose of restraining the assessment or collection of (1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any income, war-profits, excess-profits, or estate tax, or (2) the amount of the liability of a fiduciary under section 3467 of the Revised Statutes in respect of any such tax.

ART. 105. Remedies for collection of tax and claims against transferred assets.—Three remedies are provided for the collection of the tax:

(1) *Collection by distraint.*—The collector may issue warrant of distraint authorizing the seizure and sale of any or all of the assets of the estate. (See R. S. secs. 3187 et seq., as amended by sec. 1016 of the Revenue Act of 1924.)

(2) *Collection by suit to subject the property to sale.*—The collector may commence in any court of the United States appropriate proceedings, in the name of the United States, to subject the property of the decedent to sale under the judgment or decree of the court.

(3) *Collection by suit for personal liability.*—The personal liability of the executor, of the transferee or trustee of property transferred in contemplation of or intended to take effect in possession or enjoyment at or after decedent's death, and of the beneficiary of life insurance, may be enforced by any appropriate action.

(4) *Claims against transferred assets.*—The amount for which a transferee of the property of a decedent is liable, at law or in equity, and the amount of the personal liability of a fiduciary under section 3467 of the Revised Statutes, in respect of any estate tax imposed by Title III of the Revenue Act of 1926, or by prior acts, whether shown on the return of the executor or determined as a deficiency in the tax, shall be assessed against such transferee or such fiduciary, as the case may be, and collected and paid, in the same manner and subject to the same provisions and limitations as in the case of a deficiency imposed by Title III of the Revenue Act of 1926, except as hereinafter provided. The provisions relating to the payment of the tax and interest, the authorization of distraint and proceedings in court for collection, the prohibition of claims for abatement and claims and suits for refund, the filing of a petition with the Board of Tax Appeals, and the filing of a petition for review of the Board's decision, are included in various sections and articles relating to deficiencies in tax imposed by Title III.

The term "transferee" as used in this article includes an heir, legatee, devisee, and distributee of an estate of a deceased person.

The period of limitation for assessment of the liability of a transferee or of a fiduciary, referred to in the first paragraph of this article, is as follows:

(a) Within one year after the expiration of the period of limitation for assessment against the taxpayer. (See secs. 308, 310, 311, 312, 318, and 1109, and Art. 77.)

(b) If the period of limitation for assessment against the executor expired before the enactment of the Revenue Act of 1926 but assessment against the executor was made within such period, then within six years after the making of such assessment against the executor,

but in no case later than one year after the enactment of the Revenue Act of 1926.

(c) If a court proceeding against the executor for the collection of the tax has been begun within the period of limitation for the bringing of such proceeding, then within one year after the return of execution in such proceeding.

If a notice of the liability of a transferee, or the liability of a fiduciary, has been mailed to such transferee or to such fiduciary under the provisions of section 308 (a) (see Art. 76), then the running of the statute of limitations shall be suspended for a period in which the Commissioner is prohibited from making the assessment (and in any event, if a proceeding in respect of the liability is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

The provisions of section 316 do not apply in any suit or proceeding for the enforcement of the liability of a transferee, or a fiduciary under section 3467 of the Revised Statutes, which was pending at the time of the enactment of the Revenue Act of 1926.

RECORDS, STATEMENTS, AND SPECIAL RETURNS

SEC. 1102 (a) Every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as the Commissioner deems sufficient to show whether or not such person is liable to tax. * * *

(d) Any oath or affirmation required by the provisions of this Act or regulations made under authority thereof may be administered by any officer authorized to administer oaths for general purposes by the law of the United States or of any State, Territory, or possession of the United States, wherein such oath or affirmation is administered, or by any consular officer of the United States.

ART. 106. **Executor's duty to keep records.**—It is the duty of the executor to keep such records as the Commissioner may require. Executors are required to keep such complete and detailed records of the affairs of the estate as will enable the Commissioner to determine accurately the amount of the tax liability.

ART. 107. **Executor's duty to render statements.**—It is the duty of the executor not only to make the formal return, but also to render any other sworn statement which the Commissioner may require for the purpose of determining whether a tax liability exists and, if so, the extent thereof.

ESTATES ADMINISTERED IN THE UNITED STATES COURT FOR CHINA

Sec. 321. (a) The term "resident" as used in this title includes a citizen of the United States with respect to whose property any probate or administration proceedings are had in the United States Court for China. Where no part of the gross estate of such decedent is situated in the United States at the time of his death, the total amount of tax due under this title shall be paid to or collected by the clerk of such court, but where any part of the gross estate of such decedent is situated in the United States at the time of his death, the tax due under this title shall be paid to or collected by the collector of the district in which is situated the part of the gross estate in the United States, or, if such part is situated in more than one district, then the collector of such district as may be designated by the Commissioner.

(b) For the purpose of this section the clerk of the United States Court for China shall be a collector for the territorial jurisdiction of such court, and taxes shall be collected by and paid to him in the same manner and subject to the same provisions of law, including penalties, as the taxes collected by and paid to a collector in the United States.

NOTICE OF PERSONS ACTING AS FIDUCIARY

Sec. 317. (a) Upon notice to the Commissioner that any person is acting as executor, such person shall assume the powers, rights, duties, and privileges of an executor in respect of a tax imposed by this title or by any prior estate tax Act, until notice is given that such person is no longer acting as executor.

(b) Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 316, the fiduciary shall assume on behalf of such person the powers, rights, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person), until notice is given that the fiduciary capacity has terminated.

(c) Notice under subdivision (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

(d) In the absence of any notice to the Commissioner under subdivision (a) or (b), notice under this title of a deficiency or other liability, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for the purposes of this title.

ART. 108. Notice of persons acting as fiduciary.—The "notice to the Commissioner" provided for in section 317 shall be in writing signed by the fiduciary and filed with the Commissioner, setting forth the name and address of the person for whom he is acting in a fiduciary capacity and also the nature of the liability of such person, accompanied by satisfactory evidence of his authority to act for such person in the fiduciary capacity. If the fiduciary capacity exists by order of court, a certified copy of the order of the court may be regarded as such satisfactory evidence. The written notice

to the Commissioner need not be accompanied by evidence of the authority of the fiduciary to act if there is already on file with the Commissioner satisfactory evidence of the authority to act. Any such written notice which has been filed with the Commissioner since the enactment of the Revenue Act of 1926 shall be considered as sufficient notice to the Commissioner within the meaning of section 317 if and when there is or has been filed with the Commissioner the satisfactory evidence herein provided for. When the fiduciary capacity has terminated, the fiduciary, in order to be relieved of any further duty or liability as such, must file with the Commissioner written notice that the fiduciary capacity has terminated as to him, accompanied by satisfactory evidence of the termination of the fiduciary capacity. Such written notice should state the name and address of the person, if any, who has been substituted as fiduciary.

This article, made under the provisions of section 317 of the Revenue Act of 1926, shall not be taken to abridge in any way the powers and duties of fiduciaries provided for in other sections of Title III of the Act or in any prior estate tax Act.

SCOPE OF REPEAL

Sec. 1200. (a) The following parts of the Revenue Act of 1924 are repealed, to take effect (except as otherwise provided in this Act) upon the enactment of this Act, subject to the limitations provided in subdivision (b) :

*	*	*	*	*	*
Part I of Title III (called "Estate Tax") ;					
*	*	*	*	*	*

Sections 1004, 1005, 1006, and 1007, subdivision (a) of section 1008, sections 1009, 1010, 1011, 1012, 1014, 1018, 1019, and 1020, subdivisions (a) and (b) of section 1021, subdivision (c) of section 1025, and sections 1026, 1027, 1028, 1029, 1030, and 1031 (being certain administrative provisions).

(b) The parts of the Revenue Act of 1924 which are repealed by this Act shall (except as provided in sections 283 and 318 and except as otherwise specifically provided in this Act), remain in force for the assessment and collection of all taxes imposed by such Act, and for the assessment, imposition, and collection of all interest, penalties, or forfeitures which have accrued or may accrue in relation to any such taxes and for the assessment and collection, to the extent provided in the Revenue Act of 1924, of all taxes imposed by prior income, war profits, or excess profits tax acts, and for the assessment, imposition, and collection of all interest, penalties, or forfeitures which have accrued or may accrue in relation to any such taxes. In the case of any tax imposed by any part of the Revenue Act of 1924 repealed by this Act, if there is a tax imposed by this Act in lieu thereof, the provision imposing such tax shall remain in force until the corresponding tax under this Act takes effect under the provisions of this Act.

Section 714, Revenue Act, 1928. The parts of the Revenue Act of 1926 which are repealed by this Act shall remain in force for the assessment and collection of all taxes imposed thereby and for the

assessment, imposition, and collection of all interest, penalties, or forfeitures which have accrued or may accrue in relation to any such taxes.

ART. 109. Scope of repeal.—The Revenue Act of 1926 retains in force (except as provided in sec. 318) the provisions of Part I, Title III, of the Revenue Act of 1924, and the provisions of estate tax titles of all prior Acts, for the assessment and collection of all taxes accruing thereunder and for the imposition and collection of all penalties which have accrued or may accrue in relation to any such taxes. The Revenue Act of 1928 to the same extent, and for the same purpose, retains in force the parts of the Revenue Act of 1926 repealed by the Revenue Act of 1928.

RULES AND REGULATIONS

SEC. 1101. The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this Act.

ART. 110. Promulgation of regulations.—In pursuance of the statute, the foregoing regulations are hereby made and promulgated, and all rulings inconsistent therewith are hereby revoked, except as in this article indicated. These regulations apply to all pending estate-tax cases except where a particular question is governed by a specific provision of the earlier statutes differing from the Revenue Act of 1926, as amended and supplemented by the Revenue Act of 1928, in which cases the provisions of the applicable statute control and Regulations 37 (Revised January, 1921), Regulations 63, Regulations 68, and Regulations 70 (1926 Edition), to that extent remain in full force and effect, subject to the following changes:

Article 25, Regulations 37, and Article 21, Regulations 63, have been amended by Treasury Decision 3487 to read as follows:

“Reservation of powers.—Where a transfer by trust or otherwise is subject to revocation by the donor, or the terms thereof may be altered or amended by him, or he reserves to himself the right to take or assume either full or partial control of the transferred property, or to direct or control the management thereof, all facts and circumstances bearing upon the donor's intent are to be considered, and if it appears that he intended the transfer to take effect in possession or enjoyment at or after his death, then the value of the transferred property should be included in the gross estate, unless it further appears that the transfer was a bona fide sale for a fair consideration in money or money's worth.”

Article 27 of Regulations 37 (revised January, 1921), and Article 23, Regulations 63, were amended by Treasury Decision 3951 to read as follows:

“Property held jointly or as tenants by the entirety.—The statute provides for the inclusion in the gross estate of interests held jointly

by the decedent and any other person or persons, and of estates by the entirety. This provision applies only to a joint tenancy, or a tenancy by the entirety, created subsequent to the passage of the Revenue Act in force and effect at the time of the decedent's death. This class of property includes all interests, whether in real or personal property, where the survivor takes the entire property by right of survivorship, and consequently the decedent's interest therein forms no part of his estate for purposes of administration. It does not include interests held as tenants in common, where the interest of each tenant passes free from any right of survivorship.

"The following are examples of this class: Real estate held by joint tenants; real estate held by husband and wife (known as an estate by the entirety); money deposited in a bank or trust company in the joint names of the decedent and another and payable to either or the survivor; and, in general, all securities and other personal property, where the title thereto was vested in the decedent and one or more other persons, subject to the right of survivorship.

"These amendments apply only to the estates of decedents who died prior to the effective date of the Revenue Act of 1924."

Articles 17, 18, and 19 of Regulations 63 were amended by Treasury Decision 4064 to read as follows:

"ART. 17. *Transfers during life*.—Except bona fide sales for a fair consideration in money or money's worth, all transfers made by the decedent subsequent to September 8, 1916, are taxable if made in contemplation of or intended to take effect in possession or enjoyment at or after his death. (As to transfers made prior to September 9, 1916, which were intended to take effect in possession or enjoyment at or after decedent's death, and with respect to which the decedent reserved the power to alter, amend, or revoke, see Art. 19.) To constitute a bona fide sale for a fair consideration in money or money's worth, it must have been made in good faith, and the price must have been a fair equivalent and reducible to a money value.

"Where a transfer, by trust or otherwise, was made by written instrument, duplicate copies thereof should be filed with the return. If of public record, one of the copies should be certified; if not of record, one copy should be verified. Where the decedent was a non-resident, only one copy, certified or verified, need be filed.

TRANSFERS IN CONTEMPLATION OF DEATH

"ART. 18. *Nature of transfer*.—The words 'in contemplation of death' do not mean, on the one hand, a general expectation of death such as all persons entertain, nor, on the other, is the meaning limited to an expectation of immediate death. A transfer, however, is made in contemplation of death wherever the person making it is influenced to do so by such an expectation of death, arising from bodily or mental conditions, as prompts persons to dispose of their property to those whom they deem proper objects of their bounty. Such a transfer is taxable, although the decedent parts absolutely and immediately with his title to and possession and enjoyment of the property. Any transfer made by a decedent subsequent to September 8, 1916, and within two years prior to his death, without a fair consideration in money

or money's worth, is presumed to be taxable if of a material part of his property and in the nature of a final disposition or distribution thereof. The executor must return the value, as of the date of decedent's death, of all property transferred by the decedent subsequent to September 8, 1916, in contemplation of death, where the transfer was not a bona fide sale for a fair consideration in money or money's worth, and must disclose in the return all transfers of a material part of decedent's property made subsequent to September 8, 1916, without such consideration, but need not include in the gross estate the value of such thereof as he contends were not made in contemplation of death, in which event he may submit with the return evidence of all material facts tending to disclose the decedent's motive at the time, his then anticipation of death, and mental, and physical condition.

"The presumption of taxability of a transfer made within the two-year period may be rebutted by proof that it was not made under the conditions stated in the statute, and such proof must be filed with the return. Unless proof is submitted which is sufficient to rebut the presumption the transfer will be included in the gross estate in computing the tax.

"The fact that a gift was made as an advancement, to be taken into account upon the final distribution of the decedent's estate, is not enough, standing alone, to establish taxability.

TRANSFERS INTENDED TO TAKE EFFECT AT OR AFTER DEATH

"**ART. 19. General.**—All transfers made by the decedent subsequent to September 8, 1916, other than bona fide sales for a fair consideration in money or money's worth, which were intended to take effect in possession or enjoyment at or after his death, are taxable, and the value, as of the date of the decedent's death, of property or interest so transferred must be returned as part of the gross estate.

"Where a transfer (whether made before or after the passage of the Revenue Act of 1916) was intended to take effect in possession or enjoyment at or after the decedent's death, and the enjoyment of the property or the interest transferred was subject at the date of the decedent's death to change by the exercise of any power to alter, amend, or revoke, the value, as of the date of the decedent's death, of the property or interest so transferred must be returned as a part of the gross estate.

Articles 15, 16, and 17 of Regulations 68 were amended by Treasury Decision 4065 to read as follows:

"**ART. 15. Transfers During Life.**—Except bona fide sales for a fair consideration in money or money's worth, all transfers made by the decedent subsequent to September 8, 1916, are taxable if made in contemplation of or intended to take effect in possession or enjoyment at or after his death. If the enjoyment of the property or the interest transferred (whether the property or the interest was transferred by the decedent before or after passage of the Revenue Act of 1916) was subject at the date of the decedent's death to change by the exercise of any power to alter, amend, or revoke, or if any such power was relinquished by the decedent subsequent to the effective date of Part

I, Title III, of the Revenue Act of 1924, in contemplation of death, the entire value of the property, or the interest transferred, as of the date of decedent's death must be included in the gross estate unless the transfer constituted a bona fide sale for a fair consideration in money or money's worth. To constitute a bona fide sale for a fair consideration in money or money's worth, it must have been made in good faith, and the price must have been a fair equivalent, and reducible to a money value.

"Where a transfer, by trust or otherwise, was made by written instrument, duplicate copies thereof should be filed with the return. If of public record, one of the copies should be certified; if not of record, one copy should be verified. Where the decedent was a non-resident, only one copy, certified or verified, need be filed.

TRANSFERS IN CONTEMPLATION OF DEATH

"ART. 16. *Nature of transfer.*—The words 'in contemplation of death' do not mean, on the one hand, a general expectation of death such as all persons entertain, nor, on the other, is the meaning limited to an expectation of immediate death. A transfer, however, is made in contemplation of death wherever the person making it is influenced to do so by such an expectation of death, arising from bodily or mental conditions, as prompts persons to dispose of their property to those whom they deem proper objects of their bounty. Such a transfer is taxable, although the decedent parts absolutely and immediately with his title to and possession and enjoyment of the property. Any transfer made by a decedent within two years prior to his death, without a fair consideration in money or money's worth, is deemed to have been made in contemplation of death if of a material part of his property and in the nature of a final disposition or distribution thereof. The executor must return the value, as of the date of decedent's death, of all property transferred by the decedent subsequent to September 8, 1916, in contemplation of death, where the transfer was not a bona fide sale for a fair consideration in money or money's worth, and must disclose in the return all transfers of a material part of decedent's property made subsequent to September 8, 1916, even though such transfer was made more than two years prior to death without such consideration. The executor is also required to report any transfer of an amount or value of \$1,000 or more made by the decedent within two years of his death and not constituting a bona fide sale for a fair consideration in money or money's worth. The executor need not include in the gross estate the value of such transfers as he contends were not made in contemplation of death. Where the executor contends that any transfer of a material part of the decedent's property, made within two years of death, is not taxable he must file with the return sworn statements in duplicate of all the material facts, including, among other things, the decedent's motive in making the transfer and his mental and physical condition at that time; also one certified copy of the death certificate. (See also Art. 20.)

"The fact that a gift was made as an advancement, to be taken into account upon the final distribution of the decedent's estate, is not, in and of itself, determinative of its taxability.

**TRANSFERS INTENDED TO TAKE EFFECT IN POSSESSION OR ENJOYMENT AT
OR AFTER DEATH**

"ART. 17. General.—All transfers made by the decedent subsequent to September 8, 1918, other than bona fide sales for a fair consideration in money or money's worth, which were intended to take effect in possession or enjoyment at or after his death, are taxable, and the value, as of the date of the decedent's death, of property or interest so transferred must be returned as a part of the gross estate."

Section 322 (a) of the Revenue Act of 1926 amends section 301 (a) of the Revenue Act of 1924 and section 323 (a) of the Revenue Act of 1926 repeals the last sentence of paragraph (3) of subdivisions (a) and (b) of section 303 of the Revenue Act of 1924 (see appendix). In pursuance of such amendment and repeal, Regulations 68 were amended by Treasury Decision 3842 in the following respects: In lieu of the third sentence of Article 7, there was substituted the following:

"The rates imposed by the Revenue Act of 1924, as originally enacted, were different from those prescribed in any of the prior acts, but section 322 of the Revenue Act of 1926 amends section 301 (a) of the Revenue Act of 1924, effective as of June 2, 1924, so as to impose the same rates prescribed in the Revenue Acts of 1918 and 1921. The rates imposed by the Revenue Act of 1924, as amended, are applicable to the estates of decedents dying after the enactment thereof but before 10.25 a. m., Washington, D. C., time, February 26, 1926."

The table appearing in Article 7 was amended by eliminating the rates of tax appearing in column 5 and substituting therefor the rates of tax appearing in column 4 of the table.

Article 8, except the table for computing estate tax, was amended to read as follows:

"ART. 8. Computation of tax.—For the purpose of computing the tax, the net estate is divisible into blocks, each block being taxed at a different and increasing rate. The preceding table gives the amount of the various blocks and the applicable rate of tax under each of the taxing acts. For example, the tax upon the net estate of \$1,240,000 of a decedent dying on July 1, 1924, is computed as follows:

Amount of first block-----	\$50,000 at 1 per cent-----	\$500
Amount of second block---	100,000 at 2 per cent-----	2,000
Amount of third block----	100,000 at 3 per cent-----	3,000
Amount of fourth block----	200,000 at 4 per cent-----	8,000
Amount of fifth block-----	300,000 at 6 per cent-----	18,000
Amount of sixth block----	250,000 at 8 per cent-----	20,000
Remainder -----	240,000 at 10 per cent-----	24,000

Total net estate-----	1,240,000	Total tax-----	75,500
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"On the following page will be found a table for ascertaining the tax without the detailed computation given above. An illustration

of its use is as follows: The net estate of a decedent dying July 1, 1924, amounts to \$1,240,000. By reference to the table it will be seen that the last complete block preceding this amount is \$1,000,000, and that the total tax computed on a million dollars under the rates in force amounts to \$51,500. Upon the remainder of the net estate, \$240,000, the tax is computed at the rate set out in the next following line, or at 10 per cent. The tax on this amount is consequently \$24,000. The following result is thus obtained:

Total tax on-----	\$1,000,000	=	\$51,500
Tax on-----	240,000	=	24,000
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Totals -----	1,240,000		75,500 "

The table for computing estate tax, appearing in Article 8, was amended by eliminating therefrom column 5 and by amending the heading of column 4 to read as follows:

"From 6.55 p. m., February 24, 1919, to 10.25 a. m., February 26, 1926, inclusive (Revenue Acts of 1918, 1921, and 1924, as amended)."

Article 44 was amended by eliminating therefrom the last paragraph.

Article 20 of Regulations 63 was by Treasury Decision 4183 amended by striking out the sixth sentence of its first paragraph and inserting in lieu thereof the following sentence:

"A transfer is taxable in accordance with these principles whether the decedent reserved the annuity out of the property transferred or the income therefrom."

Article 18 of Regulations 68 was by Treasury Decision 4184 amended by striking out its third paragraph and inserting in lieu thereof the following sentence:

"The rule would be the same, so far as concerns the proportion of the property to be included in the gross estate, if an annuity were reserved whether out of the property transferred or the income therefrom."

D. H. BLAIR,
Commissioner of Internal Revenue.

Approved March 23, 1929.

A. W. MELLON,
Secretary of the Treasury.

APPENDIX

REVENUE ACT OF 1924, AS AMENDED

(Amendments effective as of June 2, 1924)

TITLE III

PART I.—ESTATE TAX

SEC. 300. When used in Part I of this title—

The term “executor” means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent;

The term “net estate” means the net estate as determined under the provisions of section 303;

The term “month” means calendar month; and

The term “collector” means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner.

SEC. 301. (a) In lieu of the tax imposed by Title IV of the Revenue Act of 1921, a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 303) is hereby imposed upon the transfer of the net estate of every decedent dying after the enactment of this Act, whether a resident or nonresident of the United States:

1 per centum of the amount of the net estate not in excess of \$50,000;

2 per centum of the amount by which the net estate exceeds \$50,000 and does not exceed \$150,000;

3 per centum of the amount by which the net estate exceeds \$150,000 and does not exceed \$250,000;

4 per centum of the amount by which the net estate exceeds \$250,000 and does not exceed \$450,000;

6 per centum of the amount by which the net estate exceeds \$450,000 and does not exceed \$750,000;

8 per centum of the amount by which the net estate exceeds \$750,000 and does not exceed \$1,000,000;

10 per centum of the amount by which the net estate exceeds \$1,000,000 and does not exceed \$1,500,000;

12 per centum of the amount by which the net estate exceeds \$1,500,000 and does not exceed \$2,000,000;

14 per centum of the amount by which the net estate exceeds \$2,000,000 and does not exceed \$3,000,000;

16 per centum of the amount by which the net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

18 per centum of the amount by which the net estate exceeds \$4,000,000 and does not exceed \$5,000,000;

20 per centum of the amount by which the net estate exceeds \$5,000,000 and does not exceed \$8,000,000;

22 per centum of the amount by which the net estate exceeds \$8,000,000 and does not exceed \$10,000,000; and

25 per centum of the amount by which the net estate exceeds \$10,000,000.

(b) The tax imposed by this section shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate. The credit allowed by this subdivision shall not exceed 25 per centum of the tax imposed by this section.

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate;

(b) To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower, curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy;

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has at any time created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have

been made in contemplation of death within the meaning of Part I of this title;

(d) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has at any time created a trust, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for a fair consideration in money or money's worth;

(e) To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than a fair consideration in money or money's worth: *Provided*, That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than a fair consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further*, That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants;

(f) To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for a fair consideration in money or money's worth; and

(g) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over \$40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life.

(h) Subdivisions (b), (c), (d), (e), (f), and (g) of this section shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after the enactment of this Act.

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages upon, or any indebtedness in respect to, property (except, in the case of a resident decedent, where such property is not situated in the United States), to the extent that such claims, mortgages, or indebtedness were incurred or contracted bona fide and for a fair consideration in money or money's worth, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, or from theft, when such losses are not compensated for by insurance or otherwise, and such amounts reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or any estate, succession, legacy, or inheritance taxes;

(2) An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from such donor by gift or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax or an estate tax under this or any prior act of Congress was paid by or on behalf of the donor or the estate of such prior decedent as the case may be, and only in the amount of the value placed by the Commissioner on such property in determining the value of the gift or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate and not deducted under paragraph (1) or (3) of this subdivision;

(3) The amount of all bequests, legacies, devises, or transfers, except bona fide sales for a fair consideration in money or money's worth, in contemplation of or intended to take effect in possession or

enjoyment at or after the decedent's death, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals; and

(4) An exemption of \$50,000.

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—

(1) That proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated, but in no case shall the amount so deducted exceed 10 per centum of the value of that part of his gross estate which at the time of his death is situated in the United States;

(2) An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from such donor by gift or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax or an estate tax under this or any prior act of Congress was paid by or on behalf of the donor or the estate of such prior decedent as the case may be, and only in the amount of the value placed by the Commissioner on such property in determining the value of the gift or the gross estate of such prior decedent, and only to the extent that the value of such property is included in that part of the decedent's gross estate which at the time of his death is situated in the United States and not deducted under paragraph (1) or (3) of this subdivision; and

(3) The amount of all bequests, legacies, devises, or transfers, except bona fide sales for a fair consideration, in money or money's

worth, in contemplation of or intended to take effect in possession or enjoyment at or after the decedent's death, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used within the United States by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

(c) No deduction shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section 304 the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States.

(d) For the purpose of Part I of this title, stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States, and any property of which the decedent has made a transfer or with respect to which he has created a trust, within the meaning of subdivision (c) or (d) of section 302, shall be deemed to be situated in the United States, if so situated either at the time of the transfer or the creation of the trust, or at the time of the decedent's death.

(e) The amount receivable as insurance upon the life of a nonresident decedent, and any moneys deposited with any person carrying on the banking business, by or for a nonresident decedent who was not engaged in business in the United States at the time of his death, shall not, for the purpose of Part I of this title, be deemed property within the United States.

(f) Missionaries duly commissioned and serving under boards of foreign missions of the various religious denominations in the United States, dying while in the foreign missionary service of such boards, shall not, by reason merely of their intention to permanently remain in such foreign service, be deemed nonresidents of the United States, but shall be presumed to be residents of the State, the District of Columbia, or the Territories of Alaska or Hawaii wherein they respectively resided at the time of their commission and their departure for such foreign service.

SEC. 304. (a) The executor, within two months after the decedent's death, or within a like period after qualifying as such, shall give

written notice thereof to the collector. The executor shall also, at such times and in such manner as may be required by regulations made pursuant to law, file with the collector a return under oath in duplicate, setting forth (1) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident, of that part of his gross estate situated in the United States; (2) the deductions allowed under section 303; (3) the value of the net estate of the decedent as defined in section 303; and (4) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

(b) Return shall be made in all cases where the gross estate at the death of the decedent exceeds \$50,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate.

SEC. 305. (a) The tax imposed by Part I of this title shall be due and payable one year after the decedent's death, and shall be paid by the executor to the collector.

(b) Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part not to exceed five years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

(c) If the time for the payment is thus extended there shall be collected, as a part of such amount, interest thereon at the rate of 6 per centum per annum from the expiration of six months after the due date of the tax to the expiration of the period of the extension.

(d) The time for which the Commissioner may extend the time for payment of the estate tax imposed by Title IV of the Revenue Act of 1921 is hereby increased from three years to five years.

SEC. 306. As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax.

SEC. 307. As used in Part I of this title the term "deficiency" means—

(1) The amount by which the tax imposed by Part I of this title exceeds the amount shown as the tax by the executor upon his return;

but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the executor upon his return, or if no return is made by the executor, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax.

SEC. 308. (a) If the Commissioner determines that there is a deficiency in respect of the tax imposed by Part I of this title, the executor, except as provided in subdivision (d), shall be notified of such deficiency by registered mail, but such deficiency shall be assessed only as hereinafter provided. Within 60 days after such notice is mailed the executor may file an appeal with the Board of Tax Appeals established by section 900.

(b) If the Board determines that there is a deficiency, the amount so determined shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the Board shall be assessed, but a proceeding in court may be begun, without assessment, for the collection of any part of the amount so disallowed. The court shall include in its judgment interest upon the amount thereof at the rate of 6 per centum per annum from the date prescribed for the payment of the tax to the date of the judgment. Such proceedings shall be begun within one year after the final decision of the Board, and may be begun within such year even though the period of limitation prescribed in section 310 has expired.

(c) If the executor does not file an appeal with the Board within the time prescribed in subdivision (a) of this section, the deficiency of which the executor has been notified shall be assessed, and shall be paid upon notice and demand from the collector.

(d) If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, such deficiency shall be assessed immediately and notice and demand shall be made by the collector for the payment thereof. In such case the assessment may be made (1) without giving the notice provided in subdivision (a) of this section, or (2) before the expiration of the 60-day period provided in subdivision (a) of this section even though such notice has been given, or (3) at any time prior to the final decision by the Board upon such deficiency even though the executor has filed an appeal. If the executor does not file a claim in abatement as provided in sec-

tion 312, the deficiency so assessed (or, if the claim so filed covers only a part of the deficiency, then the amount not covered by the claim) shall be paid upon notice and demand from the collector.

(e) Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the due date of the tax to the date the deficiency is assessed.

(f) Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax) may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of two years. If an extension is granted, the Commissioner may require the executor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties, as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. In such case there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. If the part of the deficiency the time for payment of which is so extended is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 1 per centum a month for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period.

(g) The 50 per centum addition to the tax provided by section 3176 of the Revised Statutes, as amended, shall, when assessed after the enactment of this Act in connection with an estate tax, be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of subdivision (e) of this section shall not be applicable.

SEC. 309. (a) (1) Where the amount determined by the executor as the tax imposed by Part I of this title, or any part of such amount, is not paid on the due date of the tax, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 1 per centum a month from the due date until it is paid.

(2) Where an extension of time for payment of the amount so determined as the tax by the executor has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under subdivision (c) of section 305, is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subdivision, interest at the rate of 1 per centum a month shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) Where a deficiency, or any interest assessed in connection therewith under subdivision (e) of section 308, or any addition to the tax provided for in section 3176 of the Revised Statutes, as amended, is not paid in full within 30 days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 1 per centum a month from the date of such notice and demand until it is paid.

(c) If a claim in abatement is filed, as provided in section 312, the provisions of subdivision (b) of this section shall not apply to the amount covered by the claim in abatement.

SEC. 310. (a) Except as provided in section 311 and in subdivision (b) of section 308 and in subdivision (b) of section 312, the amount of the estate taxes imposed by Part I of this title shall be assessed within four years after the return was filed, and no proceeding in court for the collection of such taxes shall be begun after the expiration of five years after the return was filed.

(b) The period within which an assessment is required to be made by subdivision (a) of this section in respect of any deficiency shall be extended (1) by 60 days if a notice of such deficiency has been mailed to the executor under subdivision (a) of section 308 and no appeal has been filed with the Board of Tax Appeals, or (2) if an appeal has been filed, then by the number of days between the date of the mailing of such notice and the date of the final decision by the Board.

SEC. 311. (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(b) Where the assessment of the tax is made within the period prescribed in section 310 or in this section, such tax may be collected by distraint or by a proceeding in court, begun within six years after the assessment of the tax. Nothing in this Act shall be construed as preventing the beginning, without assessment, of a proceeding in court for the collection of the tax at any time before the expiration of the period within which an assessment may be made.

(c) This section shall not (1) authorize the assessment of a tax or the collection thereof by distraint or by a proceeding in court if at the time of the enactment of this Act such assessment, distraint, or proceeding was barred by the period of limitation then in existence, or (2) affect any assessment made, or distraint or proceeding in court begun, before the enactment of this Act.

SEC. 312. (a) If a deficiency has been assessed under subdivision (d) of section 308, the executor, within 30 days after notice and demand from the collector for the payment thereof, may file with the collector a claim for the abatement of such deficiency, or any part thereof, or of any interest or additional amounts assessed in connection therewith, or of any part of any such interest or additional amounts. Such claim shall be accompanied by a bond, in such amount, not exceeding double the amount of the claim, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount of the claim as is not abated, together with interest thereon as provided in subdivision (c) of this section. Upon the filing of such claim and bond, the collection of so much of the amount assessed as is covered by such claim and bond shall be stayed pending the final disposition of the claim.

(b) If a claim is filed as provided in subdivision (a) of this section the collector shall transmit the claim immediately to the Commissioner who shall by registered mail notify the executor of his decision on the claim. The executor may within 60 days after such notice is mailed file an appeal with the Board of Tax Appeals. If the claim is denied in whole or in part by the Commissioner (or by the Board in case an appeal has been filed) the amount, the claim for which is denied, shall be collected as part of the tax upon notice and demand from the collector, and the amount, the claim for which is allowed, shall be abated. A proceeding in court may be begun for any part of the amount, claim for which is allowed by the Board. Such proceeding shall be begun within one year after the final decision of the Board, and may be begun within such year even though the period of limitation prescribed in section 310 has expired.

(c) If the claim in abatement is denied in whole or in part, there shall be collected, at the same time as the part of the claim denied, and as a part of the tax, interest at the rate of 6 per centum per annum upon the amount of the claim denied, from the date of notice and demand from the collector under subdivision (d) of section 308 to the date of the notice and demand under subdivision (b) of this section. If the amount included in the notice and demand from the collector under subdivision (b) of this section is not paid in full within 30 days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the

rate of 1 per centum a month from the date of such notice and demand until it is paid.

(d) Except as provided in this section, no claim in abatement shall be filed in respect of any assessment made after the enactment of this Act in respect of any estate tax.

SEC. 313. (a) The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

(b) If the executor makes written application to the Commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Commissioner (as soon as possible, and in any event within one year after the making of such application, or, if the application is made before the return is filed, then within one year after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in section 310) shall notify the executor of the amount of the tax. The executor, upon payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

(c) The provisions of subdivision (b) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless the title to such part of the gross estate has passed to a bona fide purchaser for value, in which case such part shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

SEC. 314. (a) If the tax herein imposed is not paid on or before the due date thereof the collector shall, upon instruction from the Commissioner, proceed to collect the tax under the provisions of general law, or commence appropriate proceedings in any court of the United States having jurisdiction, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto.

(b) If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undis-

tributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution. If any part of the gross estate consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds, in excess of \$40,000, of such policies bear to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio.

SEC. 315. (a) Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

(b) If (1) the decedent makes a transfer of, or creates a trust with respect to, any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for a fair consideration in money or money's worth) or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for a fair consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for a fair consideration in money or money's worth.

SEC. 316. If after the enactment of this Act the Commissioner determines that any assessment should be made in respect of any estate tax imposed by the Revenue Act of 1917, the Revenue Act of

1918, or the Revenue Act of 1921, or by any such Act as amended, the amount which should be assessed (whether as deficiency or additional tax or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in case of delinquency in payment after notice and demand) as in the case of the taxes imposed by Part I of this title, except that the period of limitation prescribed in section 1009 shall be applied in lieu of the period prescribed in subdivision (a) of section 310.

SEC. 317. (a) Whoever knowingly makes any false statement in any notice or return required to be filed under Part I of this title shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both.

(b) Whoever fails to comply with any duty imposed upon him by section 304, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Commissioner or any collector or law officer of the United States or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under Part I of this title, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

SEC. 318. (a) The term "resident" as used in this title includes a citizen of the United States with respect to whose property any probate or administration proceedings are had in the United States Court for China. Where no part of the gross estate of such decedent is situated in the United States at the time of his death, the total amount of tax due under Part I of this title shall be paid to or collected by the clerk of such court, but where any part of the gross estate of such decedent is situated in the United States at the time of his death, the tax due under Part I of this title shall be paid to or collected by the collector of the district in which is situated the part of the gross estate in the United States, or, if such part is situated in more than one district, then the collector of such district as may be designated by the Commissioner.

(b) For the purpose of this section the clerk of the United States Court for China shall be a collector for the territorial jurisdiction of such court, and taxes shall be collected by and paid to him in the same manner and subject to the same provisions of law, including penalties, as the taxes collected by and paid to a collector in the United States.

LIST OF THE SEVERAL DIVISIONS AND LOCATIONS OF OFFICES OF INTERNAL REVENUE AGENTS IN CHARGE

(Communications should be addressed:
United States Internal Revenue Agent in Charge,

----- City ----- State -----)

Territory embraced	Name of division	Location of office
Alabama-----	Nashville-----	Nashville, Tenn.
Alaska-----	Seattle-----	Seattle, Wash.
Arizona-----	Denver-----	Denver, Colo.
Arkansas-----	Oklahoma-----	Oklahoma City, Okla.
California-----	San Francisco-----	San Francisco, Calif.
Colorado-----	Denver-----	Denver, Colo.
Connecticut-----	New Haven-----	New Haven, Conn.
Delaware-----	Baltimore-----	Baltimore, Md.
District of Columbia-----	do-----	Do.
Florida-----	Jacksonville-----	Jacksonville, Fla.
Georgia-----	Atlanta-----	Atlanta, Ga.
Hawaii-----	Honolulu-----	Honolulu, Hawaii.
Idaho-----	Salt Lake-----	Salt Lake City, Utah.
Illinois:		
Counties of Henderson, Warren, Knox, Peoria, Marshall, La Salle, Grundy, Kankakee, and counties north.	Chicago-----	Chicago, Ill.
Counties of Hancock, McDonough, Fulton, Tazewell, Woodford, Liv- ingston, Ford, Iroquois, and coun- ties south.	Springfield----	Springfield, Ill.
Indiana-----	Indianapolis-----	Indianapolis, Ind.
Iowa-----	Omaha-----	Omaha, Nebr.
Kansas-----	Wichita-----	Wichita, Kans.
Kentucky-----	Louisville-----	Louisville, Ky.
Louisiana-----	New Orleans-----	New Orleans, La.
Maine-----	Boston-----	Boston, Mass.
Maryland-----	Baltimore-----	Baltimore, Md.
Massachusetts-----	Boston-----	Boston, Mass.
Michigan-----	Detroit-----	Detroit, Mich.
Minnesota-----	St. Paul-----	St. Paul, Minn.
Mississippi-----	New Orleans-----	New Orleans, La.
Missouri-----	St. Louis-----	St. Louis, Mo.
Montana-----	Salt Lake-----	Salt Lake City, Utah.
Nebraska-----	Omaha-----	Omaha, Nebr.
Nevada-----	San Francisco-----	San Francisco, Calif.
New Hampshire-----	Boston-----	Boston, Mass.
New Jersey-----	Newark-----	Newark, N. J.
New Mexico-----	Denver-----	Denver, Colo.
New York:		
County of New York, north to and including Twenty-third Street.	Second New York.	Customhouse, New York City, N. Y.
Counties of Kings, Nassau, Queens, Richmond, and Suffolk.	Brooklyn-----	Brooklyn, N. Y.

List of the several divisions and locations of offices of internal revenue agents in charge—Continued

Territory embraced	Name of division	Location of office
New York—Continued.		
County of New York, north of 23d Street, and counties of Albany, Bronx, Clinton, Columbia, Dutchess, Essex, Fulton, Greene, Hamilton, Montgomery, Orange, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, Washington, and Westchester.	Upper New York.	250 West Fifty-seventh Street, New York, N. Y.
Counties of Franklin, Herkimer, Otsego, Delaware, and counties west.	Buffalo-----	Buffalo, N. Y.
North Carolina-----	Greensboro---	Greensboro, N. C.
North Dakota-----	St. Paul-----	St. Paul, Minn.
Ohio:		
Counties of Preble, Miami, Clark, Madison, Union, Marion, Morrow, Knox, Coshocton, Guernsey, Noble, Washington, and counties south.	Cincinnati---	Cincinnati, Ohio.
Counties of Darke, Shelby, Champaign, Logan, Hardin, Wyandot, Crawford, Richland, Ashland, Holmes, Tuscarawas, Harrison, Jefferson, and counties north.	Cleveland----	Cleveland, Ohio.
Oklahoma-----	Oklahoma---	Oklahoma City, Okla.
Oregon-----	Seattle-----	Seattle, Wash.
Pennsylvania:		
Counties of Potter, Clinton, Center, Blair, Bedford, and counties east.	Philadelphia--	Philadelphia, Pa.
Counties of McKean, Cameron, Clearfield, Cambria, Somerset, and counties west.	Pittsburgh---	Pittsburgh, Pa.
Rhode Island-----	New Haven---	New Haven, Conn.
South Carolina-----	Columbia-----	Columbia, S. C.
South Dakota-----	St. Paul-----	St. Paul, Minn.
Tennessee-----	Nashville-----	Nashville, Tenn.
Texas-----	Dallas-----	Dallas, Tex.
Utah-----	Salt Lake-----	Salt Lake City, Utah.
Vermont-----	Boston-----	Boston, Mass.
Virginia-----	Richmond-----	Richmond, Va.
Washington-----	Seattle-----	Seattle, Wash.
West Virginia-----	Huntington---	Huntington, W. Va.
Wisconsin-----	Milwaukee---	Milwaukee, Wis.
Wyoming-----	Denver-----	Denver, Colo.

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U.S. TREASURY DEPARTMENT
BUREAU OF INTERNAL REVENUE

REGULATIONS 80
(1934)
RELATING TO
ESTATE TAX
INCLUDING ESTATE TAXES
UNDER THE
REVENUE ACTS OF 1926 AND 1932
AS AMENDED



UNITED STATES
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REGULATIONS 80

RELATING TO THE

ESTATE TAX

UNDER

TITLE III OF THE REVENUE ACT OF 1926

As Amended and Supplemented by the Revenue Acts of 1928, 1932, and 1934

AND THE

ESTATE TAX

UNDER

TITLE II OF THE REVENUE ACT OF 1932 AND THE REVENUE ACT OF 1932 AS AMENDED BY THE REVENUE ACT OF 1934

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REGULATIONS 80

ESTATE TAX

[Except as otherwise specified, the section references are to the Revenue Act of 1926]

TITLE III.—ESTATE TAX

SEC. 300. When used in this title—

(a) The term “executor” means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent;

(b) The term “net estate” means the net estate as determined under the provisions of section 303;

(c) The term “month” means calendar month; and

(d) The term “collector” means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States; or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner.

SEC. 301. (a) In lieu of the tax imposed by Title III of the Revenue Act of 1924, a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 303) is hereby imposed upon the transfer of the net estate of every decedent dying after the enactment of this act, whether a resident or nonresident of the United States;

1 per centum of the amount of the net estate not in excess of \$50,000;

2 per centum of the amount by which the net estate exceeds \$50,000 and does not exceed \$100,000;

3 per centum of the amount by which the net estate exceeds \$100,000 and does not exceed \$200,000;

4 per centum of the amount by which the net estate exceeds \$200,000 and does not exceed \$400,000;

5 per centum of the amount by which the net estate exceeds \$400,000 and does not exceed \$600,000;

6 per centum of the amount by which the net estate exceeds \$600,000 and does not exceed \$800,000;

7 per centum of the amount by which the net estate exceeds \$800,000 and does not exceed \$1,000,000;

8 per centum of the amount by which the net estate exceeds \$1,000,000 and does not exceed \$1,500,000;

9 per centum of the amount by which the net estate exceeds \$1,500,000 and does not exceed \$2,000,000;

10 per centum of the amount by which the net estate exceeds \$2,000,000 and does not exceed \$2,500,000;

11 per centum of the amount by which the net estate exceeds \$2,500,000 and does not exceed \$3,000,000;

12 per centum of the amount by which the net estate exceeds \$3,000,000 and does not exceed \$3,500,000;

13 per centum of the amount by which the net estate exceeds \$3,500,000 and does not exceed \$4,000,000;

14 per centum of the amount by which the net estate exceeds \$4,000,000 and does not exceed \$5,000,000;

15 per centum of the amount by which the net estate exceeds \$5,000,000 and does not exceed \$6,000,000;

16 per centum of the amount by which the net estate exceeds \$6,000,000 and does not exceed \$7,000,000;

17 per centum of the amount by which the net estate exceeds \$7,000,000 and does not exceed \$8,000,000;

18 per centum of the amount by which the net estate exceeds \$8,000,000 and does not exceed \$9,000,000;

19 per centum of the amount by which the net estate exceeds \$9,000,000 and does not exceed \$10,000,000;

20 per centum of the amount by which the net estate exceeds \$10,000,000.

TITLE II.—ADDITIONAL ESTATE TAX. (REVENUE ACT OF 1932.)

SEC. 401. Revenue Act of 1932.

(a) In addition to the estate tax imposed by section 301(a) of the Revenue Act of 1926, there is hereby imposed upon the transfer of the net estate of every decedent dying after the enactment of this Act, whether a resident or nonresident of the United States, a tax equal to the excess of—

(1) the amount of a tentative tax computed under subsection (b) of this section, over

(2) the amount of the tax imposed by section 301(a) of the Revenue Act of 1926, computed without regard to the provisions of this title.

(b) The tentative tax referred to in subsection (a) (1) of this section shall equal the sum of the following percentages of the value of the net estate:

Upon net estates not in excess of \$10,000, 1 per centum.

\$100 upon net estates of \$10,000; and upon net estates in excess of \$10,000 and not in excess of \$20,000, 2 per centum in addition of such excess.

\$300 upon net estates of \$20,000; and upon net estates in excess of \$20,000 and not in excess of \$30,000, 3 per centum in addition of such excess.

\$600 upon net estates of \$30,000; and upon net estates in excess of \$30,000 and not in excess of \$40,000, 4 per centum in addition of such excess.

\$1,000 upon net estates of \$40,000; and upon net estates in excess of \$40,000 and not in excess of \$50,000, 5 per centum in addition of such excess.

\$1,500 upon net estates of \$50,000; and upon net estates in excess of \$50,000 and not in excess of \$100,000, 7 per centum in addition of such excess.

\$5,000 upon net estates of \$100,000; and upon net estates in excess of \$100,000 and not in excess of \$200,000, 9 per centum in addition of such excess.

\$14,000 upon net estates of \$200,000; and upon net estates in excess of \$200,000 and not in excess of \$400,000, 11 per centum in addition of such excess.

\$36,000 upon net estates of \$400,000; and upon net estates in excess of \$400,000 and not in excess of \$600,000, 13 per centum in addition of such excess.

\$62,000 upon net estates of \$600,000; and upon net estates in excess of \$600,000 and not in excess of \$800,000, 15 per centum in addition of such excess.

\$92,000 upon net estates of \$800,000; and upon net estates in excess of \$800,000 and not in excess of \$1,000,000, 17 per centum in addition of such excess.

\$126,000 upon net estates of \$1,000,000; and upon net estates in excess of \$1,000,000 and not in excess of \$1,500,000, 19 per centum in addition of such excess.

\$221,000 upon net estates of \$1,500,000; and upon net estates in excess of \$1,500,000 and not in excess of \$2,000,000, 21 per centum in addition of such excess.

\$326,000 upon net estates of \$2,000,000; and upon net estates in excess of \$2,000,000 and not in excess of \$2,500,000, 23 per centum in addition of such excess.

\$441,000 upon net estates of \$2,500,000; and upon net estates in excess of \$2,500,000 and not in excess of \$3,000,000, 25 per centum in addition of such excess.

\$566,000 upon net estates of \$3,000,000; and upon net estates in excess of \$3,000,000 and not in excess of \$3,500,000, 27 per centum in addition of such excess.

\$701,000 upon net estates of \$3,500,000; and upon net estates in excess of \$3,500,000 and not in excess of \$4,000,000, 29 per centum in addition of such excess.

\$846,000 upon net estates of \$4,000,000; and upon net estates in excess of \$4,000,000 and not in excess of \$4,500,000, 31 per centum in addition of such excess.

\$1,001,000 upon net estates of \$4,500,000; and upon net estates in excess of \$4,500,000 and not in excess of \$5,000,000, 33 per centum in addition of such excess.

\$1,166,000 upon net estates of \$5,000,000; and upon net estates in excess of \$5,000,000 and not in excess of \$6,000,000, 35 per centum in addition of such excess.

\$1,516,000 upon net estates of \$6,000,000; and upon net estates in excess of \$6,000,000 and not in excess of \$7,000,000, 37 per centum in addition of such excess.

\$1,886,000 upon net estates of \$7,000,000; and upon net estates in excess of \$7,000,000 and not in excess of \$8,000,000, 39 per centum in addition of such excess.

\$2,276,000 upon net estates of \$8,000,000; and upon net estates in excess of \$8,000,000 and not in excess of \$9,000,000, 41 per centum in addition of such excess.

\$2,686,000 upon net estates of \$9,000,000; and upon net estates in excess of \$9,000,000 and not in excess of \$10,000,000, 43 per centum in addition of such excess.

\$3,116,000 upon net estates of \$10,000,000; and upon net estates in excess of \$10,000,000, 45 per centum in addition of such excess.

(c) For the purposes of this section the value of the net estate shall be determined as provided in Title III of the Revenue Act of 1926, as amended, except that in lieu of the exemption of \$100,000 provided in section 303 (a) (4) of such Act, the exemption shall be \$50,000.

SEC. 405. Revenue Act of 1934.

(a) Section 401 (b) of the Revenue Act of 1932 is amended to read as follows:

"(b) The tentative tax referred to in subsection (a) (1) of this section shall equal the sum of the following percentages of the value of the net estate:

"Upon net estates not in excess of \$10,000, 1 per centum.

"\$100 upon net estates of \$10,000; and upon net estates in excess of \$10,000 and not in excess of \$20,000, 2 per centum in addition of such excess.

"\$300 upon net estates of \$20,000; and upon net estates in excess of \$20,000 and not in excess of \$30,000, 3 per centum in addition of such excess.

"\$600 upon net estates of \$30,000; and upon net estates in excess of \$30,000 and not in excess of \$40,000, 4 per centum in addition of such excess.

"\$1,000 upon net estates of \$40,000; and upon net estates in excess of \$40,000 and not in excess of \$50,000, 5 per centum in addition of such excess.

"\$1,500 upon net estates of \$50,000; and upon net estates in excess of \$50,000 and not in excess of \$70,000, 7 per centum in addition of such excess.

"\$2,900 upon net estates of \$70,000; and upon net estates in excess of \$70,000 and not in excess of \$100,000, 9 per centum in addition of such excess.

"\$5,600 upon net estates of \$100,000; and upon net estates in excess of \$100,000 and not in excess of \$200,000, 12 per centum in addition of such excess.

"\$17,600 upon net estates of \$200,000; and upon net estates in excess of \$200,000 and not in excess of \$400,000, 16 per centum in addition of such excess.

"\$49,600 upon net estates of \$400,000; and upon net estates in excess of \$400,000 and not in excess of \$600,000, 19 per centum in addition of such excess.

"\$87,600 upon net estates of \$600,000; and upon net estates in excess of \$600,000 and not in excess of \$800,000, 22 per centum in addition of such excess.

"\$131,600 upon net estates of \$800,000; and upon net estates in excess of \$800,000 and not in excess of \$1,000,000, 25 per centum in addition of such excess.

"\$181,600 upon net estates of \$1,000,000; and upon net estates in excess of \$1,000,000 and not in excess of \$1,500,000, 28 per centum in addition of such excess.

"\$321,600 upon net estates of \$1,500,000; and upon net estates in excess of \$1,500,000 and not in excess of \$2,000,000, 31 per centum in addition of such excess.

"\$476,600 upon net estates of \$2,000,000; and upon net estates in excess of \$2,000,000 and not in excess of \$2,500,000, 34 per centum in addition of such excess.

"\$646,600 upon net estates of \$2,500,000; and upon net estates in excess of \$2,500,000 and not in excess of \$3,000,000, 37 per centum in addition of such excess.

"\$831,600 upon net estates of \$3,000,000; and upon net estates in excess of \$3,000,000 and not in excess of \$3,500,000, 40 per centum in addition of such excess.

"\$1,031,600 upon net estates of \$3,500,000; and upon net estates in excess of \$3,500,000 and not in excess of \$4,000,000, 43 per centum in addition of such excess.

"\$1,246,600 upon net estates of \$4,000,000; and upon net estates in excess of \$4,000,000 and not in excess of \$4,500,000, 46 per centum in addition of such excess.

"\$1,476,600 upon net estates of \$4,500,000; and upon net estates in excess of \$4,500,000 and not in excess of \$5,000,000, 48 per centum in addition of such excess.

"\$1,716,600 upon net estates of \$5,000,000; and upon net estates in excess of \$5,000,000 and not in excess of \$6,000,000, 50 per centum in addition of such excess.

"\$2,216,600 upon net estates of \$6,000,000; and upon net estates in excess of \$6,000,000 and not in excess of \$7,000,000, 52 per centum in addition of such excess.

"\$2,736,600 upon net estates of \$7,000,000; and upon net estates in excess of \$7,000,000 and not in excess of \$8,000,000, 54 per centum in addition of such excess.

"\$3,276,600 upon net estates of \$8,000,000; and upon net estates in excess of \$8,000,000 and not in excess of \$9,000,000, 56 per centum in addition of such excess.

"\$3,836,600 upon net estates of \$9,000,000; and upon net estates in excess of \$9,000,000 and not in excess of \$10,000,000, 58 per centum in addition of such excess.

"\$4,416,600 upon net estates of \$10,000,000; and upon net estates in excess of \$10,000,000, 60 per centum in addition of such excess."

(b) The amendment made by this section shall be effective only with respect to transfers of estates of decedents dying after the date of the enactment of this Act.

ARTICLE 1. The various statutes.—The Federal estate tax was first imposed by the Act of September 8, 1916. This law was amended by the Act of March 3, 1917 (Title III), by increasing the rate of tax. The Act of October 3, 1917 (Title IX), imposed a tax upon the transfer of the net estate of decedents dying after October 3, 1917, in addition to the tax imposed by the Revenue Act of 1916, as amended. The Revenue Act of 1918 (Title IV), which became effective at 6.55 p. m., eastern standard time, February 24, 1919, reduced the rates applicable to net estates below \$1,500,000, as compared with those of Title IX of the Revenue Act of 1917, and con-

tained a number of provisions not found in any of the prior Acts. The Revenue Act of 1921 (Title IV) became effective at 3.55 p. m., eastern standard time, November 23, 1921. It reenacted without change the rates of Title IV of the Revenue Act of 1918; supplanted all prior Acts as to the estates of decedents dying after the effective date thereof; embodied numerous changes, but contained many of the provisions of the earlier Acts. The Revenue Act of 1924 (Part I, Title III), which became effective at 4.01 p. m., eastern standard time, June 2, 1924, as originally enacted, increased the rates applicable to net estates in excess of \$100,000, as compared with those of Title IV of the Revenue Act of 1921; contained provisions not found in any of the prior Acts; but did not include all of the exemptions accorded by the Revenue Act of 1921.

The Revenue Act of 1926 (Title III), which became effective at 10.25 a. m., eastern standard time, February 26, 1926, increased from \$50,000 to \$100,000 the specific exemption to be deducted from the gross estates of resident decedents in determining the net estates for the purpose of the tax and made effective rates ranging from 1 to 20 per cent. The Revenue Act of 1926 amends the rates imposed by Part 1, Title III, of the Revenue Act of 1924, by substituting for such rates the same rates imposed by the Revenue Acts of 1918 and 1921; allows a credit in estates of decedents dying after the enactment of the Revenue Act of 1926, on account of State inheritance tax paid, not to exceed 80 per cent of the tax imposed by the Act; and contains provisions not found in the prior Acts. The Revenue Act of 1928 (Part 1, Title II), which became effective at 8 a. m., eastern standard time, May 29, 1928, does not repeal Title III of the Revenue Act of 1926, but makes certain amendments to that title and amends and supplements the general administrative provisions of the Revenue Act of 1926. Public Resolution No. 131, Seventy-first Congress, approved 10.30 p. m., eastern standard time, March 3, 1931, amends certain provisions of the Revenue Act of 1926. The Revenue Act of 1932, which became effective at 5 p. m., eastern standard time, June 6, 1932, by Title II, imposes a tax upon the net estates of decedents dying after the effective date thereof, in addition to the tax imposed by the Revenue Act of 1926, to be assessed, collected, and paid and subject to the same provisions of law as the tax imposed by the Revenue Act of 1926, the net estate for the purposes of such additional tax being determined by deducting a specific exemption of only \$50,000 and against such additional tax no credit is allowed on account of State estate, inheritance, legacy, or succession taxes paid. The Revenue Act of 1932 also, by Title VI, amends and supplements the provisions of the Revenue Act of 1926. The Revenue Act of 1934 amends the Revenue Act of 1932 by increasing the rates for the computation of

the additional tax (imposed upon estates of decedents dying on or after May 11, 1934), and also by Title II and Title III amends and supplements certain provisions of the Revenue Act of 1926 and the Revenue Act of 1932, effective 11.40 a. m., eastern standard time, May 10, 1934. The Revenue Act of 1926, as amended and supplemented by the Revenue Act of 1928, the Joint Resolution (Public, No. 131, Seventy-first Congress) of March 3, 1931, the Revenue Act of 1932, and the Revenue Act of 1934, is herein referred to as "the statute." References to other statutes are specific.

ART. 2. Transfers and interests reached.—The statute subjects to tax transfers resulting from the decedent's death. Except bona fide sales for an adequate and full consideration in money or money's worth, it also subjects to tax transfers made by the decedent in his lifetime (1) if made in contemplation of death; or (2) if intended to take effect in possession or enjoyment at or after his death, as, for example, in the case he retained the income of the transferred property or the right thereto for his life, or for any period not ascertainable without reference to his death, or for any period of such duration as to evidence an intention to retain the enjoyment throughout his life; or (3) if he retained for any such period, either alone or in conjunction with any other person or persons, the right to designate those who should possess or enjoy the transferred property or the income therefrom; or (4) if at his death the enjoyment of the transferred property was subject to any change through the exercise of a power by him alone or in conjunction with any other person or persons to alter, amend, or revoke, or in the case such a power was relinquished by him in contemplation of his death.

There are also subject to tax the homestead and other exemptions; dower, curtesy, or statutory estate in lieu thereof, of the surviving spouse; property held by the decedent and another person or persons if the survivor or survivors take by right of survivorship; property passing under a general power of appointment exercised by the decedent; insurance receivable by the executor under policies taken out by the decedent upon his life, and insurance so taken out and receivable by all other beneficiaries to the extent that the aggregate amount thereof exceeds \$40,000.

ART. 3. Neither a property nor an inheritance tax.—The Federal estate tax is imposed upon the transfer of the net estate of every person dying after September 8, 1916, determined in the manner prescribed by the applicable law. (See article 1.) The tax is not laid upon the property but upon the transfer of the entire net estate and not any particular legacy, devise, or distributive share. The relationship of the beneficiary to the decedent has no bearing upon the question of liability or the extent thereof. The transfer of property is taxable although it escheats to the State for lack of heirs.

ESTATES SUBJECT TO TAX

ART. 4. Description of taxable estates.—The tax is imposed upon the transfer of the net estate. The term “net estate” has a distinct meaning in the statute, signifying the difference between the total value of the gross estate and the total of the authorized deductions. One of the deductions authorized in the case of the estate of a resident of the United States is a specific exemption. A specific exemption is also an authorized deduction in the case of the estate of a citizen of the United States regardless of residence, if the decedent died after 11.40 a. m., eastern standard time, May 10, 1934. For detailed information regarding the specific exemption, see article 48.

There is no basis for tax if the value of the gross estate does not exceed the total amount of the authorized deductions. Whether taxable or not, a return must be filed in every case, except in the case the value of the gross estate at the date of death does not exceed the amount of the specific exemption allowable. For detailed information regarding returns, see articles 63, 64, 65, and 70.

ART. 5. Definition of “citizen,” “resident,” and “nonresident.”—The statute provides (paragraph (5) of section 2 (a)) that the term “United States,” when used in a geographical sense, includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

A resident is one who, at the time of his death, had his domicile in the United States; or one who was a citizen of the United States at the time of death and with respect to whose property any probate or administration proceedings are had in the United States Court for China. (See section 321 (a).) A missionary who, at the time of death, was serving as such under a foreign missionary board of any religious denomination in the United States, will be presumed to have died a resident of the United States, if domiciled therein at the time of his or her commission and departure for such service, and not a nonresident merely by reason of his or her intention to permanently remain in such service. (See section 303 (f).) All persons not residents of the United States as above defined, or to whom the presumption just stated does not apply, are nonresidents.

A citizen of the United States is a nonresident if his domicile is in Puerto Rico, the Philippine Islands, or other foreign country, whereas a subject or a citizen of a foreign country is a resident if his domicile is in the United States. A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal.

Every person born or naturalized in the United States (including citizens and residents of possessions of the United States who have been made citizens of the United States by treaty or Act of Congress) who owes his allegiance to or is entitled to the protection of the United States is a citizen thereof. When any naturalized citizen has left the United States and resided for two years in the foreign country from which he came or five years in any other foreign country, it is presumed that he has ceased to be a citizen of the United States. This presumption does not apply, however, to residents abroad when the United States was at war, nor does it apply in the case of individuals born in the United States. For example, if a subject of the King of Sweden, after being naturalized in the United States, returned to Sweden and resided there for two years prior to April 6, 1917, he is presumed once more to be an alien. However, even though an individual born in the United States of either citizen or alien parents resided in a foreign country for a number of years, he would still be a citizen of the United States unless he had become naturalized in or taken an oath of allegiance to the foreign country of residence or some other foreign state. A person who has filed his declaration of intention of becoming a citizen of the United States but who has not yet received his final citizenship papers is an alien.

Subsequent to the enactment of the amendments to the Revenue Act of 1926 made by the Revenue Act of 1934 different provisions control the determination of the tax liability of the estates of citizens or residents of the United States and the estates of nonresidents not citizens of the United States. Prior to the enactment of the amendments contained in the Revenue Act of 1934 the tax liability of estates of residents and nonresidents was controlled by different provisions without regard to citizenship except as to estates administered in the United States Court for China as in this article indicated.

DETERMINATION OF TAX LIABILITY

ART. 6. Manner of determining liability.—The first step in the determination of tax liability is to ascertain the total value of the decedent's gross estate. (See articles 10 to 28, inclusive; also article 50.) The second step is to subtract from the value of the gross estate the total amount of the deductions authorized in order to arrive at the value of the net estate. (See articles 29 to 48, inclusive, and articles 51 to 55, inclusive.) The third step is the computation of the tax and any allowable credits. (See articles 7, 8, and 9.)

If the specific exemption is applicable and the decedent died after the enactment of the Revenue Act of 1932, the net estate must be determined on the basis of a specific exemption of \$100,000 for

the computation of the tax imposed by the Revenue Act of 1926, and the net estate must also be determined on the basis of a specific exemption of \$50,000 for the computation of the additional tax imposed by the Revenue Act of 1932 and the additional tax imposed by such Act as amended by the Revenue Act of 1934.

ART. 7. Rates of tax.—The Revenue Act of 1916, the amendment thereto of March 3, 1917, the Revenue Act of 1917, the Revenue Act of 1918, and the Revenue Act of 1924, as originally enacted, each imposed different rates of tax. The rates imposed by the Revenue Act of 1921 are the same as those prescribed in the Revenue Act of 1918. The rates imposed by the Revenue Act of 1924, as originally enacted, were different from those prescribed in any of the prior Acts, but section 322 (a) of the Revenue Act of 1926 amends section 301 (a) of the Revenue Act of 1924, effective as of June 2, 1924, so as to impose the same rates prescribed by the Revenue Acts of 1918 and 1921. The rates imposed by the Revenue Act of 1926 are different from those prescribed in any of the prior Acts and are applicable to the estates of decedents dying after 10.25 a. m., eastern standard time, February 26, 1926, no change in rates being made by the provisions of the Revenue Act of 1928. An additional tax is imposed by the Revenue Act of 1932 which is the excess of the amount computed at the rates set forth in the Revenue Act of 1932 over the tax imposed by the Revenue Act of 1926. The rates set forth in the Revenue Act of 1932 are applicable to estates of decedents dying after 5 p. m., eastern standard time, June 6, 1932, and before May 11, 1934. The rates prescribed for the computation of the additional tax by the Revenue Act of 1934 are applicable to estates of decedents dying on or after May 11, 1934. See "Table I" and "Table II" for the rates, and the following article for an explanation for the use of the tables.

ART. 8. Computation of tax.—The tax imposed by the Revenue Act of 1926 and earlier Acts is computed on the value of the net estate at progressively graduated rates. The additional tax imposed by the Revenue Act of 1932 and by the Revenue Act of 1934 in amendment thereof is obtained by subtracting the tax imposed by the Revenue Act of 1926 from the tax computed at the rates set forth either in the Revenue Act of 1932 or that of 1934, as the case may require. The remainder resulting from such subtraction is the additional tax imposed. In certain cases arising after the enactment of the Revenue Act of 1924, the tax is reduced by authorized credits. (See article 9.) If credits are authorized, the tax computed at the rates prescribed by the Revenue Act of 1924 and the Revenue Act of 1926 and the additional tax computed under the provisions of

the Revenue Act of 1932 or the Revenue Act of 1934 is the gross tax or the tax before reduction by credits. The difference between the gross tax and the credits is the net tax.

Table I shows the tax and rates in effect under the Revenue Acts of 1934, 1932, and 1926. Table II shows the tax and rates in effect prior to the enactment of the Revenue Act of 1926 and after the enactment of the Revenue Act of 1916. Column (1) of Table I sets forth the total taxes imposed by the Revenue Act of 1926 and the Revenue Act of 1932 as amended by the Revenue Act of 1934—that is, the tax imposed by section 301 (a) of the Revenue Act of 1926 and the additional tax imposed by section 401 of the Revenue Act of 1932, as amended by section 405 of the Revenue Act of 1934, upon specified amounts and the rates for the total taxes upon the excess of such amounts. Column (2) of Table I sets forth the total taxes imposed by the Revenue Act of 1926 and the Revenue Act of 1932, prior to the enactment of the Revenue Act of 1934, upon specified amounts and the rates for the total taxes upon the excess of such amounts. Column (3) of Table I sets forth the tax imposed by the Revenue Act of 1926 upon specified amounts and the rates for the tax upon the excess of such amounts. Columns (1) to (4), inclusive, of Table II set forth the tax on specified amounts and the rates for the tax upon the excess of such amounts, in effect for the periods shown in the headings. Column (A) of each table sets forth the specified amounts upon which the tax is shown in the first subcolumn of each of the numbered columns. It also indicates the respective minimum limits to which the rates shown in the second subcolumn of each of the numbered columns are applicable. Column (B) of each table indicates the respective maximum limits to which the rates shown in the second subcolumn of each of the numbered columns are applicable.

The computation under each column must be based on the applicable net estate. The net estate of a resident decedent computed for the purpose of the additional tax imposed by the Revenue Act of 1932 differs from the net estate computed for the purpose of the tax imposed by the Revenue Act of 1926 because of the difference in the specific exemption.

TABLE I (FOR COMPUTATION OF ESTATE TAX)

(A) Net estate equal- ing—	(B) Net estate not exceeding—	(1) In effect on and after May 11, 1934. (Tentative tax, 1932 Act as amend- ed.) Total taxes imposed by 1926 Act, and by 1932 Act as amended by 1934 Act		(2) In effect from 5 p. m., eastern stand- ard time, June 6, 1932, to May 10, 1934, inclusive. (Tentative tax, 1932 Act.) Total taxes imposed by 1926 Act and by 1932 Act		(3) In effect after 10.25 a. m., eastern standard time, Feb. 26, 1926. Rev- enue Act of 1926	
		Tax on amount in column A	Rate of tax on excess over amount in col- umn A	Tax on amount in column A	Rate of tax on excess over amount in col- umn A	Tax on amount in column A	Rate of tax on excess over amount in col- umn A
			Per cent		Per cent		Per cent
	\$10,000		1		1		1
	20,000	\$100	2	\$100	2	\$100	1
	30,000	300	3	300	3	200	1
	40,000	600	4	600	4	300	1
	50,000	1,000	5	1,000	5	400	1
	60,000	1,500	7	1,500	7	500	1
	70,000	2,900	9	2,900	7	900	2
	100,000	5,600	12	5,000	9	1,500	3
	200,000	17,600	16	14,000	11	4,500	4
	400,000	49,600	19	36,000	13	12,500	5
	600,000	87,600	22	62,000	15	22,500	6
	800,000	131,600	25	92,000	17	34,500	7
	1,000,000	181,600	28	126,000	19	48,500	8
	1,500,000	321,600	31	221,000	21	88,500	9
	2,000,000	476,600	34	326,000	23	133,500	10
	2,500,000	646,600	37	441,000	25	183,500	11
	3,000,000	831,600	40	566,000	27	238,500	12
	3,500,000	1,031,600	43	701,000	29	298,500	13
	4,000,000	1,246,600	46	846,000	31	363,500	14
	4,500,000	1,476,600	48	1,001,000	33	433,500	14
	5,000,000	1,716,600	50	1,166,000	35	503,500	15
	5,500,000	2,016,600	52	1,516,000	37	653,500	16
	6,000,000	2,236,600	54	1,886,000	39	813,500	17
	7,000,000	3,276,600	56	2,686,000	41	983,500	18
	8,000,000	3,836,600	58	3,116,000	43	1,163,500	19
	9,000,000	4,416,600	60		45	1,353,500	20
	10,000,000						

TABLE II (FOR COMPUTATION OF ESTATE TAX,

(A) Net estate equal- ing—	(B) Net estate not ex- ceeding—	(1)		(2)		(3)		(4)	
		Tax on amount in column A	Rate of tax on excess over amount in column A	Tax on amount in column A	Rate of tax on excess over amount in column A	Tax on amount in column A	Rate of tax on excess over amount in column A	Tax on amount in column A	Rate of tax on excess over amount in column A
			Per cent		Per cent		Per cent		Per cent
\$50,000	\$50,000	-----	1	-----	2	-----	1½	-----	1
150,000	150,000	\$500	2	\$1,000	4	\$750	3	\$500	2
250,000	250,000	2,500	3	5,000	6	3,750	4½	2,500	3
450,000	450,000	5,500	4	11,000	8	8,250	6	5,500	4
750,000	750,000	13,500	6	27,000	10	20,250	7½	13,500	5
1,000,000	1,000,000	31,500	8	57,000	10	42,750	7½	28,500	5
1,500,000	1,500,000	51,500	10	82,000	12	61,500	9	41,000	6
2,000,000	2,000,000	101,500	12	142,000	12	106,500	9	71,000	6
3,000,000	3,000,000	161,500	14	202,000	14	151,500	10½	101,000	7
4,000,000	4,000,000	301,500	16	342,000	16	256,500	12	171,000	8
5,000,000	5,000,000	461,500	18	502,000	18	376,500	13½	251,000	9
8,000,000	8,000,000	641,500	20	682,000	20	511,500	15	341,000	10
10,000,000	10,000,000	1,241,500	22	1,282,000	22	961,500	15	641,000	10
-----	-----	1,681,500	25	1,722,000	25	1,261,500	15	841,000	10

In effect from Sept. 9, 1916,
to Mar. 2, 1917, inclusive.
Revenue Act of 1916

In effect from Mar. 3, 1917,
to Oct. 3, 1917, inclusive.
Revenue Act of 1916 as
amended by Act of Mar. 3,
1917

In effect from Oct. 4, 1917, to
6.55 p. m., eastern standard
time, Feb. 24, 1919, inclusive.
Total taxes imposed by 1916
Act as amended by Act of
Mar. 3, 1917, and imposed by
1917 Act

In effect from 6.55 p. m., east-
ern standard time, Feb. 24,
1919, to 10.25 a. m., eastern
standard time, Feb. 26, 1926.
Revenue Acts of 1918, 1921,
and 1924

An illustration of the tables' use is as follows: The net estate of a decedent who died July 1, 1931, amounts to \$1,240,000. By reference to Table I it will be seen that the specified amount in column (A) nearest to the value of the decedent's net estate but less than such value is \$1,000,000. The tax upon this amount as indicated in column (3) opposite \$1,000,000 in column (A) is \$48,500. Upon the remainder of the net estate, \$240,000, the tax is computed at the rate of 8 per cent set out in the second subcolumn of column (3) opposite \$1,000,000 in column (A). The tax on this remainder is, consequently, \$19,200. The following result is thus obtained:

Tax on-----	\$1, 000, 000	=	\$48, 500
Tax on-----	240, 000	=	19, 200
Total-----	1, 240, 000		67, 700

Example (in the case the transfer of the net estate is subject to the tax imposed by the Revenue Act of 1926 and also to the additional tax imposed by the Revenue Act of 1932 as amended by the Revenue Act of 1934, and if credit for State inheritance tax is involved): A resident decedent died August 15, 1934, leaving a net estate of the value of \$210,000 after deducting the specific exemption of \$100,000 allowed by the Revenue Act of 1926. The tax shown in the first subcolumn of column (3) of Table I on a net estate equaling \$200,000 is \$4,500. As \$210,000 exceeds \$200,000 and falls below \$400,000, the tax on the excess of \$10,000 is computed at the rate of 4 per cent, the rate shown in the second subcolumn of column (3). The \$400 tax on such excess added to \$4,500 gives \$4,900, the gross tax computed under the Revenue Act of 1926. (Credit for gift tax is not involved in this example.) It will be assumed that the maximum amount of credit, \$3,920, or 80 per cent of \$4,900, is allowed for State inheritance tax. The net tax imposed by the Revenue Act of 1926 is the difference between \$4,900 and \$3,920, or \$980. For the purpose of the additional tax imposed by the Revenue Act of 1934 the decedent's net estate after deducting the specific exemption of \$50,000 is \$260,000. The total gross taxes imposed by the Revenue Act of 1926 and the Revenue Act of 1934 shown in the first subcolumn of column (1) on a net estate equaling \$200,000 is \$17,600. As \$260,000 exceeds \$200,000 and falls below \$400,000, the tax on the excess of \$60,000 is computed at 6 per cent, the rate shown in the second subcolumn of column (1). The tax on such excess is, consequently, \$9,600. The \$9,600 added to the \$17,600 gives \$27,200, the tax computed upon the net estate of \$260,000 at the rates set forth in the Revenue Act of 1934. The difference between the total gross taxes imposed by the Revenue Act of 1926 and the Revenue Act of 1934, \$27,200, and the gross tax, \$4,900, imposed by the Revenue Act of 1926, is \$22,300, the additional tax imposed by the Revenue

Act of 1934. As in this example no credit for gift tax is involved, the amount of the gross additional tax imposed by the Revenue Act of 1934 is the same as the net additional tax imposed by the Revenue Act of 1934. The net tax imposed by the Revenue Act of 1926, \$980, added to the net additional tax imposed by the Revenue Act of 1934, \$22,300, results in a total net tax of \$23,280. A tabulation of this example is as follows:

Gross tax imposed by 1926 Act.....	\$4, 900	
Credit for gift tax imposed by 1924 and/or 1932 Act.....	0	
Gross tax, less credit for gift tax.....	4, 900	
Credit for estate, inheritance, legacy, or succession tax.....	3, 920	
Net tax imposed by 1926 Act.....		\$980
Total gross taxes imposed by 1926 and 1934 Acts.....	27,200	
Gross tax imposed by 1926 Act.....	4, 900	
Gross additional tax imposed by 1934 Act.....	22,300	
Credit for gift tax imposed by 1932 Act.....	0	
Net additional tax imposed by 1934 Act.....		22, 300
Total net tax.....		23, 280

Example (if the transfer of the net estate is subject only to the additional tax imposed by the Revenue Act of 1934): The gross estate of a resident decedent who died September 1, 1934, amounts to \$85,000. Deductions for administration expenses and claims against the estate are allowed in the amount of \$10,000, leaving \$75,000 before the deduction of the specific exemption authorized by the Revenue Act of 1926. As that exemption is \$100,000, it is apparent that the estate is not subject to the estate tax imposed by such Act. However, as the specific exemption authorized by the Revenue Act of 1934 is only \$50,000, the estate is subject to the additional estate tax imposed by the latter Act. For the purpose of such additional estate tax the net estate amounts to \$25,000. The tax shown in the first subcolumn of column (1) of Table I on a net estate equaling \$20,000 is \$300. As \$25,000 exceeds \$20,000 and falls below \$30,000, the tax on the excess of \$5,000 is computed at 3 per cent, the rate shown in the second subcolumn of column (1). The tax on such excess is, consequently, \$150. The \$150 added to the \$300 gives \$450, the tax computed upon the net estate of \$25,000 at the rates prescribed by the Revenue Act of 1934. Inasmuch as, in this example, the estate is not subject to the tax imposed by the Revenue Act of 1926, \$450 is the gross additional tax imposed by the Revenue Act of 1934. As credit for gift tax is not involved in this example, the gross additional tax is the same as the net additional tax. It

will be noted that credit for State or Territorial estate, inheritance, legacy, or succession taxes is not allowable against the additional tax imposed by the Revenue Act of 1934.

Example (if the transfer of the net estate is subject to the tax imposed by the Revenue Act of 1926 and to the additional tax imposed by the Revenue Act of 1932, and if credits for gift tax and for State inheritance taxes are involved): The value of the gross estate of a resident decedent who died September 15, 1932, is \$400,000 and the value of the net estate for the purpose of the tax imposed by the Revenue Act of 1926 is \$225,000. The gross tax imposed by the Revenue Act of 1926 is \$5,500. (See illustration for use of table in computing the tax). On July 1, 1932, the decedent, in contemplation of death, transferred certain real property to his daughter as a gift. The value of the real property as of the date of the gift, and as of the time of death, was \$155,000. As a result of this gift, a gift tax was paid in the amount of \$3,625, gift tax on net gift of \$100,000 after exclusion of \$5,000 and deduction of \$50,000 specific exemption. (See Gift Tax Act of 1932.) As the value of the transferred real property is included in the decedent's gross estate, a credit for gift tax is allowed against the gross tax imposed by the Revenue Act of 1926 in such amount as does not exceed an amount which bears the same ratio to the gross tax, \$5,500, as the value at which the taxable gift (\$155,000 less the gift tax exclusion of \$5,000) is included in the gross estate bears to the value of the entire gross estate. (See article 9 (a).) This ratio, which is ascertained by dividing \$150,000 by \$400,000, is .375. The credit for gift tax is, therefore, allowed in the amount which results from multiplying \$5,500 by .375, or \$2,062.50. The gross tax, \$5,500, less the credit for gift tax, is \$3,437.50. It will be assumed that State inheritance taxes paid equal or exceed the maximum amount of the credit (80 per cent of the gross tax less the gift tax credit) allowable therefor. Accordingly, \$2,750 is allowed as the credit for State inheritance taxes. The difference between \$3,437.50 and \$2,750 is \$687.50, which is the net tax imposed by the Revenue Act of 1926. The net estate for the purpose of the additional tax imposed by the Revenue Act of 1932 is \$275,000. The total gross taxes imposed by the Revenue Act of 1926 and the Revenue Act of 1932 computed in accordance with the table is \$22,250. The difference between such total gross taxes and \$5,500, the gross tax computed under the Revenue Act of 1926, is \$16,750, the gross additional tax imposed by the Revenue Act of 1932. The credit for gift tax against such gross additional tax (1) can not exceed an amount which bears the same ratio to the gross additional tax computed under the Revenue Act of 1932 as the value at which the taxable gift is included in the gross estate bears to the value of the entire

gross estate (\$16,750, the gross tax, multiplied by .375, the factor, equals \$6,281.25), and (2) can not exceed the difference between the total amount of the gift tax and the credit for gift tax allowed against the gross tax computed under the Revenue Act of 1926. The credit here allowed is \$3,625 less \$2,062.50, or \$1,562.50. A tabulation of this example is as follows:

Gross tax imposed by 1926 Act.....	\$5, 500. 00	
Credit for gift tax imposed by 1924 and/or 1932 Act.....	2, 062. 50	
	<hr/>	
Gross tax less credit for gift tax.....	3, 437. 50	
Credit for estate, inheritance, legacy, or succession tax.....	2, 750. 00	
	<hr/>	
Net tax imposed by 1926 Act.....		\$687. 50
Total gross taxes imposed by 1926 and 1932 Acts.....	22, 250. 00	
Gross tax imposed by 1926 Act.....	5, 500. 00	
	<hr/>	
Gross additional tax imposed by 1932 Act.....	16, 750. 00	
Credit for gift tax imposed by 1932 Act.....	1, 562. 50	
	<hr/>	
Net additional tax imposed by 1932 Act.....		15, 187. 50
	<hr/>	
Total net tax.....		15, 875. 00

CREDITS AGAINST ESTATE TAX

(GIFT TAX CREDIT)

SEC. 801. Revenue Act of 1932.

Section 301 of the Revenue Act of 1926 is amended by inserting after subdivision (a) a new subdivision to read as follows:

"(b) (1) If a tax has been paid under Title III of the Revenue Act of 1932 on a gift, and thereafter upon the death of the donor any amount in respect of such gift is required to be included in the value of the gross estate of the decedent for the purposes of this title, then there shall be credited against the tax imposed by subdivision (a) of this section the amount of the tax paid under such Title III with respect to so much of the property which constituted the gift as is included in the gross estate, except that the amount of such credit shall not exceed an amount which bears the same ratio to the tax imposed by subdivision (a) of this section as the value (at the time of the gift or at the time of the death, whichever is lower) of so much of the property which constituted the gift as is included in the gross estate, bears to the value of the entire gross estate.

"(2) For the purposes of paragraph (1), the amount of tax paid for any year under Title III of the Revenue Act of 1932 with respect to any property shall be an amount which bears the same ratio to the total tax paid for such year as the value of such property bears to the total amount of net gifts (computed without deduction of the specific exemption) for such year."

SEC. 402. Revenue Act of 1932. (Pertaining to additional estate tax.)

* * * * *

(b) (1) If a tax has been paid under Title III of this Act on a gift, and thereafter upon the death of the donor any amount in respect of such gift is required to be included in the value of the gross estate of the decedent for the purposes of this title, then there shall be credited against the tax imposed by section 401 of this Act the amount of the tax paid under such Title III with respect to so much of the property which constituted the gift as is included in the gross estate, except that the amount of such credit (A) shall not exceed an amount which bears the same ratio to the tax imposed by section 401 of this Act as the value (at the time of the gift or at the time of the death, whichever is lower) of so much of the property which constituted the gift as is included in the gross estate, bears to the value of the entire gross estate, and (B) shall not exceed the amount by which the gift tax paid under Title III of this Act with respect to so much of the property as constituted the gift as is included in the gross estate, exceeds the amount of the credit under section 301 (b) of the Revenue Act of 1926, as amended by this Act.

(2) For the purposes of paragraph (1), the amount of tax paid for any year under Title III of this Act with respect to any property shall be an amount which bears the same ratio to the total tax paid for such year as the value of such property bears to the total amount of net gifts (computed without deduction of the specific exemption) for such year.

SEC. 404. Revenue Act of 1928.

Section 322 of the Revenue Act of 1924 (relating to the credit of gift tax against estate tax where the amount of the gift is required to be included in the gross estate of the decedent) is revived as of January 1, 1926 (the effective date of its repeal by the Revenue Act of 1926). Such section shall also be applied in the case of the estate tax imposed by Title III of the Revenue Act of 1926, in the same manner and to the same extent as in the case of the estate tax imposed by Title III of the Revenue Act of 1924.

SEC. 322. Revenue Act of 1924.

In case a tax has been imposed under section 319 upon any gift, and thereafter upon the death of the donor the amount thereof is required by any provision of Part I of this title to be included in the gross estate of the decedent then there shall be credited against and applied in reduction of the estate tax, which would otherwise be chargeable against the estate of the decedent under the provisions of section 301, an amount equal to the tax paid with respect to such gift; and in the event the donor has in any year paid the tax imposed by section 319 with respect to a gift or gifts which upon the death of the donor must be included in his gross estate and a gift or gifts not required to be so included, then the amount of the tax which shall be deemed to have been paid with respect to the gift or gifts required to be so included shall be that proportion of the entire tax paid on account of all such gifts which the amount of the gift or gifts required to be so included bears to the total amount of gifts in that year.

(INHERITANCE TAX CREDIT)

SEC. 301. * * *

(b) The tax imposed by this section shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually

paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate. The credit allowed by this subdivision shall not exceed 80 per centum of the tax imposed by this section, and shall include only such taxes as were actually paid and credit therefor claimed within three years after the filing of the return required by section 304.

SEC. 802. Revenue Act of 1932.

(a) Section 301(b) of the Revenue Act of 1926 is amended to read as follows:

"(c) The tax imposed by subdivision (a) of this section shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent). The credit allowed by this subdivision shall not exceed 80 per centum of the tax imposed by subdivision (a) (after deducting from such tax the credits provided by subdivision (b)), and shall include only such taxes as were actually paid and credit therefor claimed within four years after the filing of the return required by section 304, except that—

"(1) If a petition for redetermination of a deficiency has been filed with the Board of Tax Appeals within the time prescribed in section 308, then within such four-year period or before the expiration of 60 days after the decision of the Board becomes final.

"(2) If, under subdivision (b) of section 305 or subdivision (i) of section 308, an extension of time has been granted for payment of the tax shown on the return, or of a deficiency, then within such four-year period or before the date of the expiration of the period of the extension.

Refund based on the credit may (despite the provisions of section 319) be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest, except that where the overpayment was made prior to the enactment of the Revenue Act of 1932, then interest shall be allowed and paid on the amount refunded at the rate of 6 per centum per annum from the date of the overpayment to the date of such enactment."

(b) If any return required by section 304 of the Revenue Act of 1926 was filed more than three years before the enactment of this Act (except in cases where a petition for redetermination of a deficiency has been filed with the Board of Tax Appeals within the time prescribed in section 308) the credit for estate, inheritance, legacy, or succession taxes shall be determined as if this section had not been enacted.

SEC. 402. Revenue Act of 1932. (Pertaining to additional estate tax.)

(a) The credit provided in section 301(c) of the Revenue Act of 1926, as amended (80 per centum credit), shall not be allowed in respect of such additional tax.

ART. 9. (a) **Credit for gift tax.**—The estate is entitled with certain limitations to credit against the estate tax for Federal gift tax paid by the decedent in respect of property included in his gross estate.

(1) *Credit against estate tax imposed by the Revenue Act of 1926.*—In accordance with the provisions of section 301 (b) of

the Revenue Act of 1926 as amended by section 801 of the Revenue Act of 1932 credit for gift tax paid under the Gift Tax Act of 1932 is allowed against the estate tax imposed by section 301 (a) of the Revenue Act of 1926. Such credit can not exceed an amount which bears the same ratio to the gross estate tax computed under the provisions of the Revenue Act of 1926 as the value of the property which was the subject of the gift and included in the gross estate bears to the value of the entire gross estate. For this purpose the value of the property which was the subject of the gift and included in the gross estate, is the value at the date of the gift or at the time of the decedent's death, whichever is the lower. In accordance with section 322 of the Revenue Act of 1924 as revived and extended by section 404 of the Revenue Act of 1928, credit for the entire amount of gift tax paid under the Revenue Act of 1924 in respect of property included in the gross estate is allowed against the estate tax imposed by section 301 (a) of the Revenue Act of 1926.

(2) *Credit against additional estate tax imposed by the Revenue Acts of 1932 and 1934.*—In accordance with section 402 of the Revenue Act of 1932 credit for gift tax paid under the Gift Tax Act of 1932 is allowed against the additional estate tax imposed by section 401 of the Revenue Act of 1932. Such credit can not exceed an amount which bears the same ratio to the additional gross estate tax computed under the provisions of the Revenue Act of 1932 as the value of the property which was the subject of the gift and included in the gross estate bears to the value of the entire gross estate. For this purpose the value of the property which was the subject of the gift and included in the gross estate, is the value at the time of the gift or at the time of the death, whichever is the lower. Furthermore, such credit can not exceed the difference between the total amount of the gift tax paid in respect of the property included in the gross estate and the amount of the credit for gift tax paid under the Gift Tax Act of 1932 allowed against the estate tax imposed by the Revenue Act of 1926. No credit for gift tax paid under the Revenue Act of 1924 is allowed against the additional estate tax imposed by the Revenue Act of 1932.

In accordance with section 322 of the Revenue Act of 1924 credit for gift tax paid under the Revenue Act of 1924 is allowed against the estate tax imposed by the Revenue Act of 1924.

If only a part of the property subjected to a gift tax during a calendar year is included in the decedent's gross estate for the purpose of the estate tax, gift tax paid in respect of the property in-

cluded in the gross estate is an amount which bears the same ratio to the total gift tax paid for such calendar year as the value of such part of the property bears to the total amount of the net gifts (computed without deduction of the specific exemption) for such year. For the purpose of computing this proportion the values finally determined for the purpose of the gift tax control, irrespective of any increase or decrease in value between the date of the gift and the date of the decedent's death.

If all of the property subjected to a gift tax during a calendar year is included in the decedent's gross estate for the purpose of the estate tax, the gift tax paid in respect of the property included in the gross estate is the amount of the gift tax paid for that calendar year.

Example: On July 15, 1932, a resident donor gave his son a yacht valued at \$50,000 as a wedding present. On August 15, 1932, the decedent donated \$50,000 in cash to a charitable organization. On December 1, 1932, he transferred to his wife real property valued at \$100,000 in contemplation of death. The total amount of gifts for the year 1932 for the purpose of the gift tax is \$185,000, \$5,000 for each of the three donees being excluded from the total gifts under the provisions of the Gift Tax Act. After deducting \$50,000 specific exemption and \$45,000 for the gift to the charitable organization, the net gifts amount to \$90,000. The gift tax on the net gifts, \$3,125, was paid. The donor died on December 10, 1932, and the value of the real property transferred in contemplation of death is included in his gross estate for the purpose of the estate tax. The gift tax paid in respect of the property included in the gross estate is an amount which bears the same ratio to \$3,125 as \$95,000 bears to \$140,000, or \$2,120.54. Note that \$95,000 is the portion of the real property subject to gift tax (\$100,000 less the excluded \$5,000) and that \$140,000 is the amount of the net gifts computed without deduction of the specific exemption, \$50,000.

For examples illustrating the computation of credit in accordance with the limitations set forth in paragraphs (1) and (2) of this subdivision, see article 8.

(b) **Credit for estate, inheritance, legacy, or succession taxes.**—Under the provisions of section 301 (c) of the Revenue Act of 1926, as amended, the estate is entitled, under certain conditions, to a credit against the Federal estate tax for estate, inheritance, legacy, or succession taxes actually paid with respect to the estate of the decedent to any of the several States, Territories, or the District of Columbia. The credit allowed is limited to the estates of persons dying after the effective date of the Revenue Act of 1924. The provision of section 301 (c), prohibiting the allowance as a credit of any such

taxes paid with respect to the estate of a person other than the decedent, is applicable alike to estates of persons dying after the enactment of the Revenue Act of 1924 and the Revenue Act of 1926.

The credit applying to the estates of persons dying after the effective date of the Revenue Act of 1924 and before the effective date of the Revenue Act of 1926 is limited to 25 per cent of the Federal estate tax, after the deduction of any credit for gift tax imposed by the Revenue Act of 1924. If the decedent's death occurred after the effective date of the Revenue Act of 1926, the credit is limited to 80 per cent of the tax imposed by section 301 (a) of the Revenue Act of 1926, after deduction of the credit allowed, if any, against such tax for gift taxes paid. No credit for payment of estate, inheritance, legacy, or succession taxes is allowed against the additional tax imposed by the Revenue Acts of 1932 and 1934. Credit which may be taken or allowed on account of estate, inheritance, legacy, or succession taxes paid to any State, Territory, or the District of Columbia is limited to the amount of such taxes paid in respect of property the value of which is included in the gross estate of the decedent for Federal estate tax purposes.

If the decedent died after the effective date of the Revenue Act of 1926, the taxes allowed as a credit are limited to such as were actually paid and credit therefor claimed within four years after the filing of the return, except as otherwise provided in this paragraph. If a petition was filed with the Board of Tax Appeals for the redetermination of a deficiency within the time prescribed by section 308 (see article 76), the credit is limited to such taxes as were actually paid and credit therefor claimed within four years after the filing of the return or before the expiration of 60 days after the decision of the Board becomes final. If the return was filed after, or less than three years before, the enactment of the Revenue Act of 1932 and an extension of time was granted for payment of the tax shown on the return or of a deficiency, the credit is limited to such taxes as were actually paid and credit therefor claimed within four years after the filing of the return or before the date of the expiration of the extension. If the return was filed more than three years before the enactment of the Revenue Act of 1932, except in cases in which a petition for redetermination of a deficiency has been filed with the Board of Tax Appeals within the time prescribed by section 308, the credit is limited to such taxes as were actually paid and credit therefor claimed within three years after the filing of the return. Should the executor, in accordance with the provisions of section 811 of the Revenue Act of 1932, elect to postpone the payment of the Federal estate tax attributable to a reversionary or remainder interest, the credit allowable against the Federal estate tax attributable to such interest is limited to estate,

inheritance, legacy, or succession taxes attributable to such interest as are actually paid to any State, Territory, or the District of Columbia and credit therefor claimed prior to the expiration of 60 days after the termination of the precedent interest. (See article 82 (b).)

Refund based on the credit, despite the provisions of section 319, will be made if claim therefor is filed within the period provided for filing claim for credit. Such refunds will be made without interest unless the overpayment was made prior to the enactment of the Revenue Act of 1932, in which case interest upon the amount refunded is allowable on the amount of the refund at the rate of 6 per cent per annum from the date of the overpayment to the date of the enactment of the Revenue Act of 1932.

Before the Commissioner allows any credit for any estate, inheritance, legacy, or succession taxes, there must be submitted to him the following:

(1) Certificate of the proper officer of the taxing State or Territory showing: (a) the total amount of tax imposed (before adding interest and penalties and before allowing discount); (b) the amount of discount allowed; (c) the amount of penalties and interest imposed or charged; (d) the total amount actually paid in cash; and (e) the date of payment.

(2) A certificate of the above-mentioned officer showing whether (a) a claim for refund of such taxes or any part thereof is pending and (b) whether a refund of such taxes or any part thereof has been authorized. If any refund has been made, the date, the amount thereof, and a description of the property or interest in respect to which such refund was made must be shown in the certificate.

The evidence described above should be filed with the return, but if that is not convenient or possible, then it should be submitted to the investigating officer verifying the return, or, if the investigation of the estate has been completed, it should be transmitted to the Commissioner.

The Commissioner may require the submission of such additional proof as is deemed necessary to establish the right to the credit. For example, he may require an itemized list of the property in respect to which any such taxes were imposed, certified by the officer having custody of the records pertaining to such taxes for the State or Territory involved, and an affidavit of the executor stating whether any litigation has been instituted, or appeal taken, or any such action is designed or contemplated by him, or, to his knowledge, by any beneficiary or other person, the final determination of which may affect the amount of such State or Territorial taxes.

If, subsequent to the allowance of a credit by the Commissioner, a refund is made of any such estate, inheritance, legacy, or

succession taxes, the executor, or if the refund is made after the executor's discharge, then any person or persons to whom the refund is made, is required to advise the Commissioner of the date of the refund and the amount thereof, furnish the Commissioner with a description of the property or interest in respect to which the refund was made, and pay the Federal estate tax, if any, due as a result of such refund, together with interest.

GROSS ESTATE—GENERAL

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

(a) To the extent of the interest therein of the decedent at the time of his death.

SEC. 404. Revenue Act of 1934.

So much of section 302 of the Revenue Act of 1926 as reads as follows: "The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated" is amended to read as follows: "The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside the United States".

ART. 10. Character of interests included.—It is designed by the foregoing provision of the statute that there shall be included in the gross estate the value of all property of the decedent whether real or personal, tangible or intangible, the beneficial ownership of which was in the decedent at the time of his death, except real property situated outside the United States.

If the decedent died prior to 10.25 a. m., eastern standard time, February 26, 1926, the test which determines that the value of a given interest is to be included in the gross estate under the provisions of subdivisions (a) of the corresponding sections of the Revenue Acts prior to that of 1926, is whether the property, after death, shall be subject to: (1) Payment of the charges against the estate; (2) payment of the expenses of administration; and (3) distribution as a part of the estate. This test is not applicable if the decedent died subsequent to the effective date of the Revenue Act of 1926.

ART. 11. Specific property to be included.—The value of all real property situated in the United States and owned by the decedent at the date of his death should be included in the gross estate, whether the decedent was a resident or a nonresident, a citizen or an alien, and whether the property came into the possession and control of the executor or administrator or passed directly to heirs or devisees. If the decedent was a resident, or a nonresident citizen who died after the enactment of the Revenue Act of 1934, the value of all

personal property owned by him should be included, wherever situated. If the decedent was a nonresident alien, or, regardless of citizenship, was a nonresident who died prior to the enactment of the Revenue Act of 1934, the value of so much of his personal property as had its situs in the United States at the time of his death should be included, and the value of his entire gross estate, wherever situated, should be disclosed, if deductions are claimed. (See articles 52 to 54.) As to the situs of the personal property of nonresident alien decedents, or nonresident decedents, regardless of citizenship, who died prior to the enactment of the Revenue Act of 1934, see article 50.

The value of a vested remainder should be included in the gross estate. Nothing should be included, however, on account of a contingent remainder in the case the contingency does not happen in the lifetime of the decedent, and the interest consequently lapses at his death. Nor should anything be included on account of an interest or an estate limited for the life of the decedent. There should be included, however, the value of a reversionary interest retained by the decedent, which reverts upon the termination of a particular estate or in case of his prior death passes to others. There should also be included the value of an annuity payable to, or an interest or an estate vested in, the decedent for the life of another person who survives him. For rules in valuing such remainders, annuities, and interests or estates *pur autre vie*, see article 13, subdivision (10).

A cemetery lot owned by the decedent is part of his gross estate, but its value is limited to the salable value of such part of it as is not designed for the interment of the decedent or members of his family. Salary due the decedent, and rents and interest accrued at the time of his death, whether then payable or not, and unpaid matured coupons, should be included. The value of notes or other claims held by the decedent should be included, though they are canceled by his will. As to the valuation of notes and claims, see article 13, subdivisions (1) and (5). All bonds, including Federal, State, and municipal, should be included. (See article 12 for manner of listing and describing property returned.) In case the decedent was a nonresident alien not engaged in business in the United States, bonds, notes, and certificates of indebtedness of the United States, and bonds of the War Finance Corporation, beneficially owned by such alien, should not be included.

Dividends on either common or preferred stock should be included only if declared prior to the decedent's death, and not reflected in the market value of the stock on the day of death. Thus dividends, both declared and payable to holders of record on a date

prior to the decedent's death should be included, provided the stock is valued "ex dividend" on the date of death.

Example: A 5 per cent dividend upon stock is declared March 1, payable on April 1, to stockholders of record on March 15. If the death occurred on March 10, and the market value on that day was 90, the value to be returned for both stock and dividend is 90, the dividend being reflected in the market value of the stock. If the death occurred on March 20, the dividend is not reflected in the market value, and must be returned in addition to the market value of the stock on March 20.

ART. 12. Description of property listed on return.—In listing upon the return the property constituting the gross estate (other than household and personal effects, as to which see subdivision (9) of article 13), the description thereof should be such that the property may be readily identified. Thus, a legal description should be given of each parcel of real estate, and if located in a city the name of street and number, its area, and, if improved, a short statement of the character of the improvements. Description of bonds should include number held, principal amount, name of obligor, date of maturity, rate of interest, date or dates on which interest is payable, series number if there is more than one issue, the exchange upon which listed, or the principal business office of the corporation, if unlisted. Description of stocks should include number of shares, whether common or preferred, and, if preferred, what issue thereof, par value, quotation at which returned, exact name of corporation, and, if the stock is unlisted, the location of the principal business office and State in which incorporated and the date of incorporation. If a listed security, state principal exchange upon which sold. Description of notes should include name of maker, date on which given, date of maturity, amount of principal, amount of principal unpaid, rate of interest and whether simple or compound, date to which interest has been paid and amount of unpaid interest. Description of land contracts received should include name of vendee, date of contract, description of property, sale price, initial payment, amounts of installment payments, unpaid balance of principal and accrued interest, interest rate and date prior to decedent's death to which interest had been paid. Description of bank accounts should disclose name and address of depository, amount on deposit, whether a checking, savings, or a time-deposit account, rate of interest, if any payable, amount of interest accrued and payable, and serial number. Description of life insurance should give the name of the insurer, number of policy, face value, name of beneficiary, and amount paid or payable thereunder. In describing an annuity, the name and address of the grantor of the annuity should be given, or if payable

out of a trust or other funds such a description as will fully identify it. If payable for a term of years, the duration of the term and the date on which it began should be given, and if payable for the life of a person other than the decedent, the date of birth of such person should be stated. Judgments should be described by giving the title of the cause and the name of the court in which rendered, date of judgment, name and address of judgment debtor, amount of judgment, rate of interest to which subject, whether any payments have been made thereon, and, if so, when and in what amounts.

VALUATION OF PROPERTY

ART. 13. Valuations.—(1) *General.*—The value of all property includible in the gross estate is the fair market value thereof at the time of decedent's death. The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. The fair market value of a particular kind of property includible in the gross estate is not to be determined by a forced sale price or by an estimate of what a whole block or aggregate would fetch if placed upon the market at one and the same time. Such value is to be determined by ascertaining as a basis the fair market value at the time of the decedent's death of each unit of the property. For example, in the case of shares of stock or bonds, such unit of property is a share or a bond. All relevant facts and elements of value as of the time of the decedent's death should be considered in every case. Depreciation or appreciation in value subsequent to the time of the decedent's death are not relevant factors and will not be considered.

(2) *Real estate.*—The property should not be returned at the local assessed value thereof unless such value represents the fair market value as of the date of decedent's death. (See article 12 for manner of listing and describing real estate.)

(3) *Stocks and bonds.*—The value at the date of the decedent's death in the case of stocks and bonds, within the meaning of the statute, is the fair market value per share or bond on the date of death.

The value of stocks and bonds listed upon a stock exchange shall be obtained by taking the mean between the highest and lowest quoted selling prices upon the date of death. If the decedent died on a Sunday or a legal holiday, the transactions of the next previous business day will govern. If there were no sales on the date of death, the value shall be determined by taking the mean between the highest and lowest sales upon the nearest date either before or after the date of death, if within a reasonable period thereof. If the security was listed upon more than one exchange, the records of the exchange where the security is principally dealt in should be em-

ployed. In valuing listed stocks and bonds the executor should observe care to consult accurate records to obtain values as of the date of death.

If the securities are not listed upon an exchange, but are dealt in through brokers, or have a market, the value shall be determined by taking the mean between the highest and lowest selling prices as of the date of death, or, if there were no sales on that date, of the nearest date either before or after the date of death upon which sales were made, if within a reasonable period. If quotations are obtained from brokers, or evidence as to the sale of securities is obtained from the officers of the issuing companies, the executor should preserve in his files the letters furnishing such quotations or evidence of sale for inspection when the return is verified by an investigating officer.

In the case securities are quoted on a bona fide bid and asked basis, and actual sales are not available, the mean between the bid and asked prices as of the date of death, or the nearest date thereto if within a reasonable time thereof, will be accepted as the value.

In the case of the stock of a close corporation, the value shall be determined on the basis of the company's net worth, earning power, and dividend-paying capacity, and all other relevant factors bearing upon the value of the stock. Complete financial and other data upon which the estate bases its valuation should be submitted in duplicate with the return. In the case of the stock of other corporations where the shares are not quoted on a bona fide bid and asked basis and no bona fide sales thereof have been made within a reasonable time of the decedent's death, the value should be determined and supported in the manner indicated in this paragraph.

In the case of corporate or other bonds which are not quoted on a bona fide bid and asked basis and if no bona fide sales thereof have been made within a reasonable time of the decedent's death, the value is to be determined by giving consideration to the soundness of the security, the interest yield, the date of maturity, and other relevant factors.

In exceptional cases in which it is established by clear and convincing evidence that the value per bond or share of any security determined upon the basis of selling or bid and asked prices as herein provided does not reflect the fair market value thereof, other relevant facts and elements of value will be considered in determining the fair market value. The size of holdings of any security to be included in the gross estate is not a relevant factor and will not be considered in such determination.

The full value of securities pledged to secure a loan should be included in the gross estate. If the decedent had a trading account with a broker, all securities belonging to the decedent and held by

the broker at the date of death must be included at their fair market value on that date. Securities purchased on margin for the decedent's account and held by the broker should also be returned at their fair market value on the date of death. The amount of the decedent's indebtedness to the broker or other person with whom securities were pledged will be allowed as a deduction from the gross estate in accordance with articles 29, 36, and 52. (See article 12 for manner of listing and describing stocks and bonds.)

(4) *Interest in business.*—Care should be taken to arrive at an accurate valuation of any business in which the decedent was interested, whether as partner or proprietor. A fair appraisal as of the date of death should be made of all the assets of the business, tangible and intangible, including good will, and the business should be given a net value equal to the amount which a willing purchaser, whether an individual or corporation, would pay therefor to a willing seller in view of the net value of the assets and the demonstrated earning capacity. Special attention should be given to fixing an adequate figure for the value of the good will of the business in all cases in which the decedent has not agreed, for an adequate and full consideration in money or money's worth, that his interest therein shall pass at his death to his surviving partner or partners.

The factors hereinbefore stated relative to the valuation of other property, if applicable, will be considered in determining the valuation of an interest in a business held as proprietor or partner. All evidence bearing upon such valuation should be submitted with the return, including copies of reports in any case in which examinations of the business have been made by accountants, engineers, or any technical experts as of or near the date of decedent's death.

(5) *Notes, secured and unsecured.*—The value of notes, whether secured or unsecured, will be presumed to be the amount of unpaid principal, plus accrued interest to the date of decedent's death, unless the executor establishes a lower value, or it is shown that they are worthless. Unless returned at face value, plus accrued interest, it must be shown by satisfactory evidence that the note is worth less than the unpaid amount because of the interest rate, or date of maturity, or other cause, or that it is uncollectible, either in whole or in part, by reason of the insolvency of the party or parties liable, or for other cause, and that the property, if any, pledged or mortgaged as security is insufficient to satisfy it.

(6) *Cash on hand or on deposit.*—The amount of cash belonging to the decedent, either in his possession at the date of death or in the possession of another, should be included, together with such interest, if any, accrued thereon at the date of the decedent's death. Bank accounts should be returned in the amount on deposit to the credit of the decedent at the date of death. If checks then outstand-

ing, given in discharge of bona fide, legal obligations of the decedent, incurred for an adequate and full consideration in money or money's worth, and not as transfers coming within the provisions of section 302 (c) or (d), are subsequently honored by the bank and charged to the account, the balance remaining may be returned, provided the payments effected thereby are not claimed as deductions from the gross estate. Interest which the bank agreed to pay upon condition that the money remain on deposit for a period of time which expired subsequent to the decedent's death, should not be included.

(7) *Intangibles*.—Intangibles should be valued in accordance with the rule laid down under subdivision (1) of this article.

(8) *Other property*.—With respect to all other property, excepting household and personal effects, concerning which see subdivision (9) of this article, the executor should ascertain and return the fair market value thereof as of the date of decedent's death. Livestock, farm machinery, harvested and growing crops should be itemized and the value of each item separately returned.

(9) *Household and personal effects*.—All household and personal effects of the decedent should be included at the price which a willing buyer would pay to a willing seller. A room by room itemization is desirable. All the articles should be named specifically, except that a number of articles contained in the same room, none of which has a value in excess of \$50, may be grouped. A separate value should be given for each article named. The executor may furnish, in lieu of an itemized list, a sworn statement, in duplicate, setting forth the aggregate value of the property as appraised by a competent appraiser, or appraisers of recognized standing and ability, or by a dealer or dealers in the class of personalty involved.

If, however, there is included among the household and personal effects, articles having marked artistic or intrinsic value of a total value in excess of \$2,000, such as jewelry, silverware, paintings, etchings, engravings, antiques, books, statuary, vases, oriental rugs, collections of coins and stamps, the appraisal of an expert or experts, under oath, should be filed with the return on Form 706, accompanied by the affidavit, in duplicate, of the executor as to the completeness of the itemized list of such property and of the disinterested character and the qualifications of the appraiser or appraisers.

If it is desired to effect distribution or sale of any portion of the household or personal effects in advance of an investigation by a special officer of the Bureau of Internal Revenue, information to that effect should be given to the internal revenue agent in charge for the division wherein the decedent was domiciled at the date of his death, or if such household and personal effects were not located in such division, then to the Commissioner. The statement to the internal revenue agent in charge should be accompanied by a verified

appraisal of such property and an affidavit of the executor as to the completeness of the list of such property and the qualifications of the appraiser, as already referred to, but such an appraisal and affidavit need not be in duplicate. If a personal inspection by a special officer of the Bureau is not deemed necessary, the executor will be so advised. This procedure is designed to facilitate disposition of such property and to obviate future expense and inconvenience to the estate by affording the Commissioner an opportunity to make an investigation should one be deemed necessary prior to sale or distribution. (For location of the offices of the internal revenue agents in charge and the territory embraced in each division, see Appendix.)

If expert appraisers are employed care should be taken to see that they are reputable and of recognized competency to appraise the particular class of property involved. In the appraisal, books in sets by standard authors should be listed in separate groups. In listing paintings having artistic value, the size, subject, and artist's name should be stated. In the case of oriental rugs, the size, make, and general condition should be given. Sets of silverware should be listed in separate groups. Groups or individual pieces of silverware should be weighed and the weights given in troy ounces. In arriving at the value of silverware, the appraisers should take into consideration its antiquity, utility, desirability, condition, and obsolescence.

(10) *Annuities, life, remainder, and reversionary interests.*—In the case the decedent was entitled to receive an annuity of a definite amount during the lifetime of another person, payable at the end of annual periods, its present worth at the time of the decedent's death must be computed upon the basis of the value of a life annuity at the age of the other person. The table marked "A," a part of this subdivision, should be used for this computation. The amount payable annually should be multiplied by the figure in column 2 of the table opposite the number of years in column 1 nearest to the actual age of the other person.

Example: The decedent received under the terms of his father's will an annuity of \$10,000 for the life of his elder brother. The brother at the decedent's death was 40 years 8 months old. By reference to the table the figure in column 2 opposite 41 years, the number nearest to the brother's age, is found to be 14.86102. The present worth of the annuity is therefore \$148,610.20.

If the decedent was entitled to receive the annuity during a specified number of years, the table marked "B," a part of this subdivision, should be used.

Example: The decedent received under the terms of his father's will an annuity of \$10,000 for a period of 20 years, 15 of which had expired at the decedent's death. By reference to the table it is found that the figure in column 2 opposite 5 years, the unexpired

portion of the 20-year period, is 4.45182. The present worth of the annuity is, therefore, \$44,518.20 (4.45182 multiplied by 10,000).

If the decedent was entitled to receive the entire income of certain property during the life of another person, or for a term of years, and the annual rate of income for a period equal to or exceeding the life expectancy of such other person or such term of years, is fixed or definitely determinable at the time of the decedent's death, then the present worth of decedent's right to such income should be computed as explained above in the case of an annuity.

Example: The decedent's father placed \$100,000 in trust, with directions that it be invested in State and municipal bonds and the entire income paid to the decedent during the life of his elder brother, who was 41 years old at the decedent's death. Before the decedent's death the money was invested in State and municipal bonds maturing at dates beyond such elder brother's life expectancy, and yielding annually an income of \$5,000. In this case the rate of income is definitely determinable. By reference to the table, it is found that the present worth of an income of \$5,000, dependent upon the life of a person 41 years of age, is \$74,305.10 (14.86102 multiplied by 5,000).

If the rate of annual income is not determinable, or where the decedent was entitled merely to the personal use of nonincome-bearing property, a hypothetical annuity at a rate of 4 per cent of the value of the property should be made the basis of the calculation.

Example: The decedent died before a fund of \$100,000, of which he was entitled to receive the income during the life of a person 41 years old, had been invested by the trustees. The value of a hypothetical annuity of \$4,000, dependent upon the life of such a person, is indicated by the table to be \$59,444.08 (14.86102 multiplied by 4,000).

If the decedent had a remainder interest in property subject to the life estate of another, and such interest constituted an asset of his estate, the present worth of the remainder interest at the time of death should be obtained by multiplying the value of the property at the time of death by the figure in column 3 of Table A opposite the number of years nearest to the age of the life tenant. If the remainder interest is subject to an estate for a term of years Table B should be used.

Example: The decedent was entitled to receive property worth \$50,000 upon the death of his elder brother, to whom the income for life had been bequeathed. The brother at the time of the decedent's death was 31 years old. By reference to the table it is found that the figure in column 3, opposite 31 years, is 0.31262. The present worth of the remainder interest is, therefore, \$15,631.

If an annuity or the income which the decedent was entitled to receive is payable semiannually, quarterly, or monthly, the value of the annuity or of the right to receive the income should be deter-

mined by multiplying the aggregate amount to be paid within a year by the figure in column 2 of Table A opposite the number of years in column 1 nearest the actual age of the person whose life measures the annuity or the right to the income, or the figure in column 2 of Table B opposite the number of years the annuity or income is payable, as the case may be, and then multiplying the product by 1.01820 for monthly payments, by 1.01488 for quarterly payments, or by 1.00990 for semiannual payments.

Example: If, in the first example above given, the annuity is payable semiannually, the factor 14.86102, should be multiplied by 1.00990 and the product multiplied by 10,000. The present worth of the annuity is, therefore, \$150,081.44 ($14.86102 \times 1.00990 \times 10,000$).

If the first payment of an annuity for the life of an individual is to be paid at once, the value of the annuity is the sum of the first payment plus the present worth of a similar annuity, the first payment of which is not to be made until the end of the first period.

Example: The decedent was entitled to receive an annuity of \$50 a month payable during the life of another. The decedent died on the day payment is due. At the date of his death the person whose life measures the duration of the annuity is then 50 years of age. The value of the annuity at the date of decedent's death is \$50 plus the product of $\$50 \times 12 \times 12.47032$ (see Table A) $\times 1.01820$ (see preceding paragraph), or \$7,668.37 [$\50 plus $(\$50 \times 12 \times 12.47032 \times 1.01820)$].

If the first payment of an annuity for a definite number of years is to be paid at once, the applicable factor is the product of the factor shown in Table B multiplied by 1.02154 for monthly payments, by 1.02488 for quarterly payments, by 1.03980 for semiannual payments, or by 1.04 for annual payments. The decedent was the beneficiary of an annuity of \$50 a month. On the day a payment was due, the decedent died. There were 300 payments to be made, including the payment due. The value of the annuity as of the date of decedent's death is the product of $\$50 \times 12 \times 15.62208$ (see Table B) $\times 1.02154$ (see preceding paragraph), or \$9,575.15 ($\$50 \times 12 \times 15.62208 \times 1.02154$).

If the annuity is payable during the life of an individual and in any event for a definite number of years, or for more than one life, or in any other manner rendering inapplicable Table A or Table B (also a part of this subdivision), the case may be stated to the Commissioner, who will thereupon make the computation and advise the executor thereof. In making such calculations, when life interests or remainders upon life interests are involved, use will be made of the Actuaries' or Combined Experience Table of Mortality, as extended (that being the basis of Table A), with interest at 4 per cent per annum compounded annually.

TABLE A

Table, single life, 4 per cent, showing the present worth of an annuity, or a life interest, and of a reversionary interest

1	2	3	1	2	3
Age	Annuity, or present value of \$1 due at the end of each year during the life of a person of specified age	Reversion, or present value of \$1 due at the end of the year of death of a person of specified age	Age	Annuity, or present value of \$1 due at the end of each year during the life of a person of specified age	Reversion, or present value of \$1 due at the end of the year of death of a person of specified age
	<i>Annuity</i>	<i>Reversion</i>		<i>Annuity</i>	<i>Reversion</i>
0	\$14. 72829	\$0. 39507	51	\$12. 17919	\$0. 49311
1	17. 30771	. 29586	52	11. 88408	. 50446
2	18. 69578	. 24247	53	11. 58531	. 51595
3	19. 15901	. 22465	54	11. 28325	. 52757
4	19. 41226	. 21491	55	10. 97789	. 53931
5	19. 55301	. 20950	56	10. 66982	. 55116
6	19. 61731	. 20703	57	10. 35931	. 56310
7	19. 62502	. 20673	58	10. 04630	. 57514
8	19. 61097	. 20727	59	9. 73131	. 58726
9	19. 53413	. 21022	60	9. 41474	. 59943
10	19. 45359	. 21332	61	9. 09765	. 61163
11	19. 36943	. 21656	62	8. 78052	. 62383
12	19. 28184	. 21993	63	8. 46412	. 63600
13	19. 19065	. 22344	64	8. 14888	. 64812
14	19. 09590	. 22708	65	7. 83552	. 66017
15	18. 99764	. 23086	66	7. 52476	. 67212
16	18. 89569	. 23478	67	7. 21699	. 68397
17	18. 79010	. 23884	68	6. 91298	. 69565
18	18. 68070	. 24305	69	6. 61301	. 70719
19	18. 56751	. 24740	70	6. 31716	. 71857
20	18. 45038	. 25191	71	6. 02612	. 72976
21	18. 32932	. 25656	72	5. 74003	. 74077
22	18. 20416	. 26138	73	5. 45928	. 75157
23	18. 07471	. 26636	74	5. 18402	. 76215
24	17. 94097	. 27150	75	4. 91463	. 77251
25	17. 80274	. 27682	76	4. 65125	. 78264
26	17. 65984	. 28231	77	4. 39383	. 79254
27	17. 51224	. 28799	78	4. 14286	. 80220
28	17. 35968	. 29386	79	3. 89858	. 81159
29	17. 20225	. 29991	80	3. 66071	. 82074
30	17. 03961	. 30617	81	3. 42900	. 82965
31	16. 87176	. 31262	82	3. 20258	. 83836
32	16. 69846	. 31929	83	2. 98024	. 84691
33	16. 51964	. 32617	84	2. 76106	. 85534
34	16. 33503	. 33327	85	2. 54366	. 86371
35	16. 14437	. 34060	86	2. 32795	. 87200
36	15. 94755	. 34817	87	2. 11384	. 88024
37	15. 74427	. 35599	88	1. 90115	. 88842
38	15. 53421	. 36407	89	1. 69107	. 89650
39	15. 31722	. 37241	90	1. 48540	. 90441
40	15. 09295	. 38104	91	1. 28432	. 91214
41	14. 86102	. 38996	92	1. 09024	. 91961
42	14. 62122	. 39918	93	. 90647	. 92667
43	14. 37356	. 40871	94	. 73687	. 93320
44	14. 11860	. 41852	95	. 58435	. 93906
45	13. 85713	. 42857	96	. 46182	. 94378
46	13. 58958	. 43886	97	. 36698	. 94742
47	13. 31698	. 44935	98	. 24038	. 95229
48	13. 03942	. 46002	99	. 00000	. 96154
49	12. 75716	. 47088			
50	12. 47032	. 48191			

TABLE B

Table showing the present worth at 4 per cent of an annuity for a term-certain, and of a reversionary interest postponed for a term-certain

1	2	3	1	2	3
Number of years	Present worth of an annuity of \$1, payable at the end of each year, for a certain number of years	Present worth of \$1, payable at the end of a certain number of years	Number of years	Present worth of an annuity of \$1, payable at the end of each year, for a certain number of years	Present worth of \$1, payable at the end of a certain number of years
	<i>Annuity</i>	<i>Reversion</i>		<i>Annuity</i>	<i>Reversion</i>
1	\$0. 96154	\$0. 961538	16	\$11. 65229	\$0. 533908
2	1. 88609	. 924556	17	12. 16567	. 513373
3	2. 77509	. 888996	18	12. 65929	. 493628
4	3. 62989	. 854804	19	13. 13394	. 474642
5	4. 45182	. 821927	20	13. 59032	. 456387
6	5. 24214	. 790314	21	14. 02916	. 438834
7	6. 00205	. 759918	22	14. 45111	. 421955
8	6. 73274	. 730690	23	14. 85684	. 405726
9	7. 43533	. 702587	24	15. 24696	. 390121
10	8. 11089	. 675564	25	15. 62208	. 375117
11	8. 76047	. 649581	26	15. 98277	. 360689
12	9. 38507	. 624597	27	16. 32958	. 346816
13	9. 98565	. 600574	28	16. 66306	. 333477
14	10. 56312	. 577475	29	16. 98371	. 320651
15	11. 11839	. 555265	30	17. 29203	. 308319

GROSS ESTATE—DOWER AND CURTESY

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—* * *

(b) To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower, curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy; * * *

SEC. 404. Revenue Act of 1934.

So much of section 302 of the Revenue Act of 1926 as reads as follows: "The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated" is amended to read as follows: "The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside the United States".

ART. 14. Dower and curtesy.—The provision of section 302 (b) includes dower and curtesy and all interests created by statute in lieu thereof, although the estate or interest so created is different in character. The effect of the provision is to require the inclusion of the full value of the property, without deduction of the value of the interest of the surviving husband or wife, and without regard to the time when the right to such an interest arose. This provision does not apply to the estate of any decedent dying after September 8, 1916,

and prior to 6.55 p. m., February 24, 1919 (the effective date of Title IV of the Revenue Act of 1918), unless the property has its situs in a jurisdiction wherein dower, curtesy, or the statutory interest in lieu thereof is subject to the payment of charges against the estate, the expenses of its administration, and is subject to distribution as part of the estate, or unless there has been an election to take property devised or bequeathed in lieu of dower, curtesy, or such statutory interest, and the property so taken has its situs in a jurisdiction by the laws of which it is subject to the payment of such charges and expenses, and to distribution as a part of the estate.

GROSS ESTATE—TRANSFERS BY DECEDENT IN HIS LIFETIME

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated— * * *

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Where within two years prior to his death but after the enactment of this Act and without such a consideration the decedent has made a transfer or transfers, by trust or otherwise, of any of his property, or an interest therein, not admitted or shown to have been made in contemplation of or intended to take effect in possession or enjoyment at or after his death, and the value or aggregate value, at the time of such death, of the property or interest so transferred to any one person is in excess of \$5,000, then, to the extent of such excess, such transfer or transfers shall be deemed and held to have been made in contemplation of death within the meaning of this title. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death but prior to the enactment of this Act, without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;

(d) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. * * *

(i) If any one of the transfers, trusts, interests, rights, or powers enumerated and described in subdivisions (c), (d), and (f) of this section is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value

at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

Joint Resolution of March 3, 1931 (Public, No. 131—Seventy-first Congress):

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of subdivision (c) of section 302 of the Revenue Act of 1926 is amended to read as follows:

"To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, including a transfer under which the transferor has retained for his life or any period not ending before his death (1) the possession or enjoyment of, or the income from, the property or (2) the right to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth."

SEC. 803. Revenue Act of 1932.

(a) Section 302(c) of the Revenue Act of 1926, as amended by the Joint Resolution of March 3, 1931, is amended to read as follows:

"(c) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title."

SEC. 804. Revenue Act of 1932.

Section 303(d) of the Revenue Act of 1926 is amended by adding at the end thereof a new sentence to read as follows:

"For the purposes of this title, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration 'in money or money's worth'."

SEC. 401. Revenue Act of 1934.

Section 302(d) of the Revenue Act of 1926 is amended to read as follows:

"(d) (1) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the

enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth.

"(2) For the purposes of this subdivision the power to alter, amend, or revoke shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, or revocation takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such purpose if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given, or the power exercised, on the date of his death.

"(3) The relinquishment of any such power, not admitted or shown to have been in contemplation of the decedent's death, made within two years prior to his death without such a consideration and affecting the interest or interests (whether arising from one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggregate value, at the time of such death, in excess of \$5,000, then, to the extent of such excess, such relinquishment or relinquishments shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;"

SEC. 404. Revenue Act of 1934.

So much of section 302 of the Revenue Act of 1926 as reads as follows: "The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated" is amended to read as follows: "The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside the United States".

ART. 15. Transfers during life.—The following transfers made by the decedent during his life, by trust or otherwise, other than bona fide sales for an adequate and full consideration in money or money's worth, are subject to the tax: (1) transfers subsequent to the enactment of the Revenue Act of 1916 made in contemplation of death (see article 16); (2) transfers resulting from an arrangement, whether made before or after the enactment of the Revenue Act of 1916, if title was not to pass from the decedent to the beneficiary unless the latter survived the former, or title, having passed, was to be divested and the property returned to the decedent if the beneficiary predeceased him (see article 17); (3) transfers made

after the enactment of the Revenue Act of 1916 in the case possession or enjoyment was retained by the decedent (see article 18 and the exception stated therein); (4) transfers in which the decedent retains, either alone or in conjunction with any person or persons, the right to designate who shall possess or enjoy the property or the income thereof, if made after the enactment of the Revenue Act of 1916 (see article 19 and the exceptions stated therein); and (5) transfers made before or after the enactment of the Revenue Act of 1916 in which the enjoyment of the transferred property was subject at decedent's death to any change through the exercise, either by decedent alone or with other person or persons, of a power to alter, amend, or revoke, or if after the enactment of the Revenue Act of 1916 such a power was relinquished by the decedent in contemplation of death (see articles 20 and 21).

The value of transferred property includible in the gross estate is the value at the date of decedent's death. If a portion only of the property is so transferred as to come within the terms of the statute, only a corresponding proportion of the value of the property should be included in the gross estate. If the transferee makes additions to the property, or betterments, the enhanced value of the property at date of decedent's death, due to such additions or betterments, should not be included.

To constitute a bona fide sale for an adequate and full consideration in money or money's worth it must have been made in good faith, and the price must have been an adequate and full equivalent, and reducible to a money value. If the price was less than an adequate and full equivalent only the excess of the fair market value of the property, as of the date of the decedent's death, over the price received by the decedent should be included in the gross estate. For the purposes of the estate tax a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, is not to any extent a consideration in money or money's worth.

In the case a transfer, by trust or otherwise, was made by a written instrument, duplicate copies thereof should be filed with the return. If of public record, one of the copies should be certified; if not of record, one copy should be verified. If the decedent was a non-resident, only one copy, certified or verified, need be filed.

All transfers made by the decedent during his life of an amount of \$5,000 or more, except bona fide sales for an adequate and full consideration in money or money's worth, must be disclosed in the return, whether the executor regards such transfers as subject to the

tax or not. If the executor believes that such a transfer is not subject to the tax a brief statement of the pertinent facts should be made.

ART. 16. Transfers in contemplation of death.—Transfers in contemplation of death made by the decedent after September 8, 1916, other than bona fide sales for an adequate and full consideration in money or money's worth, must be included in the gross estate. A transfer in contemplation of death is subject to the tax although the decedent parted absolutely and immediately with his title to, and possession and enjoyment of, the property.

A transfer in contemplation of death is a disposition of property prompted by the thought of death. The phrase "contemplation of death" as used in the statute is not limited to contemplation of imminent death or to an apprehension that death is near at hand. Death must be "contemplated," that is, the motive which induces the transfer must be such that leads to testamentary disposition. A gift inter vivos which springs from a motive essentially associated with life rather than with death is not made in contemplation of death.

As the phrase "transfer in contemplation of death" is applicable to many varying transactions, the circumstances of each case must be examined to ascertain the motive which induced the decedent to make the transfer. If the transfer results from mixed motives, one of which is the thought of death, the more compelling motive controls. A condition of the mind or body of the transferor (whether occasioned by old age or disease) which naturally prompts a testamentary disposition to a proper object of his bounty, will be considered a decisive test of contemplation of death in the absence of proof of the existence of purposes associated with life as the dominant motive for the transfer.

Any transfer without an adequate and full consideration in money or money's worth, made by the decedent within two years of his death, of a material part of his property in the nature of a final disposition or distribution thereof, is, unless shown to the contrary, deemed to have been made in contemplation of death. This provision applies even though the decedent died subsequent to the effective date of the Revenue Act of 1926 and prior to the effective date of the Revenue Act of 1932. (The conclusive presumption of contemplation of death as described in the second sentence of section 302 (c) has been held to be void by the Supreme Court of the United States.)

If the executor contends that the value of a transfer of \$5,000 or more made by the decedent subsequent to September 8, 1916,

should not be included in the gross estate because he considers that such transfer was not made in contemplation of death, he should file sworn statements with the return, in duplicate, of all the material facts and circumstances, including those directly or indirectly indicating the decedent's motive in making the transfer and his mental and physical condition at that time, and one copy of the death certificate.

The fact that a gift was made as an advancement to be taken into account upon the final distribution of the decedent's estate is not, in and of itself, determinative of its taxability.

ART. 17. Transfers conditioned on survivorship.—The expression, "a transfer * * * intended to take effect in possession or enjoyment at or after his death," includes a transfer resulting from the execution of a written instrument or the making of an oral arrangement, without an adequate and full consideration in money or money's worth, whereby title was not to pass from the decedent to the beneficiary (or, if title passed it was to be defeated) unless he survived the decedent, and, should he not so survive, the property is to be restored to the decedent or become a part of his estate. The tax applies without regard to the time when the instrument was executed or the oral arrangement was made, whether before or after the enactment of the Revenue Act of 1916. Thus the gift of a life estate with provision made that upon the death of the life tenant the property is to be returned to the decedent, if then living, otherwise to pass to another, the value of the entire property (less the value at the decedent's death of the life estate, if such estate was then outstanding and had not been transferred by the decedent in contemplation of his death) constitutes a part of the gross estate. It is unimportant whether the decedent's interest be denominated a reversion or a possibility of reverter, and whether the interest of the remainderman is contingent or vested subject to be divested. (See article 15.)

ART. 18. Transfers with possession or enjoyment retained.—(a) *Transfers included.*—The statutory phrase, "a transfer * * * intended to take effect in possession or enjoyment at or after his death," includes a transfer, whether in trust or otherwise, made subject to the reservation by the decedent of the use, or the possession, or the rents or other income of the transferred property, or any part thereof, for his life, or for a period ascertainable only by reference to his death, or for a period of such duration as to evidence his intention to retain the enjoyment (in whole or in part) of the transferred property throughout his life. (See article 15.)

(b) *Taxability*.—Every such transfer (not amounting to a bona fide sale for an adequate and full consideration in money or money's worth), made by the decedent subsequent to September 8, 1916, is taxable, and the value of the property or interest so transferred shall be included in the gross estate of the decedent. The provisions of this subdivision do not apply (1) if the transfer was made prior to 10.30 p. m., eastern standard time, March 3, 1931, and (2) if the decedent died prior to 5 p. m., eastern standard time, June 6, 1932. See section 506 of the Revenue Act of 1934.

ART. 19. **Transfers with right retained to designate who shall possess or enjoy.**—(a) *Transfers included*.—The statutory phrase, “a transfer * * * intended to take effect in possession or enjoyment at or after his death,” includes a transfer, by trust or otherwise, in connection with which the decedent retained, either to himself alone or in conjunction with any other person or persons, the right for his life, or for a period ascertainable only by reference to his death, or for a period of such duration as to evidence an intention that such right should continue throughout his life, to designate the person or persons who should possess or enjoy the transferred property (in whole or in part), or any of the income thereof. (See article 15.)

(b) *Taxability*.—Such a transfer (not amounting to a bona fide sale for an adequate and full consideration in money or money's worth), in connection with which the right so to designate is limited to possession, enjoyment, or income for the period of decedent's life, or one ascertainable only by reference to his death, or for one evidencing intent that it should extend for at least the duration of decedent's life, is taxable if made subsequent to the enactment of the Revenue Act of 1916.

If, however, the right to designate is not so limited, but is subject to such an exercise as would determine the ultimate disposition of the property or any part thereof or interest therein, then to that extent the transfer is taxable whether made before or after the enactment of the Revenue Act of 1916.

The provisions of the first paragraph of this subdivision are subject to the same exception as stated in subdivision (b) of article 18.

ART. 20. **Power to change enjoyment.**—The value of the property transferred, other than by a bona fide sale for an adequate and full consideration in money or money's worth, constitutes a part of the gross estate, whether the transfer was made before or after the enactment of the Revenue Act of 1916, if at the time of the decedent's death the enjoyment thereof was subject to any change through

a power, exercisable either by the decedent alone or in conjunction with any person, to alter, amend, or revoke.

The power to alter, amend, or revoke is considered to exist on the date of the decedent's death though the exercise of the power is subject to a precedent giving of notice, or though the alteration, amendment, or revocation takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised, or though the exercise of the power is restricted to a particular time or the happening of a particular event which has not arrived or occurred at decedent's death. In such cases, in determining the value to be included in the gross estate, the full value of the property transferred subject to the power should be discounted for the period required to elapse between the date of the decedent's death and the date upon which the alteration, amendment, or revocation could take effect. (See article 13 (10).) For the purpose of determining such period required to elapse (for instance, a power the exercise of which is restricted to a particular time which does not in fact occur until after the decedent's death), if the notice has not been given or the power exercised on or before the time of the decedent's death, such notice shall be considered to have been given, or the power exercised, on the date of decedent's death. (See article 15.)

ART. 21. Power relinquished in contemplation of death.—In the case property was transferred by the decedent, who reserved a power to alter, amend, or revoke the transfer, and such power was relinquished in contemplation of death subsequent to September 8, 1916, the value of the property should be included in the gross estate, unless such relinquishment constitutes a bona fide sale for an adequate and full consideration in money or money's worth. If the consideration for such relinquishment was less than an adequate and full equivalent, only the excess of the fair market value of the property as of the date of the decedent's death over the price consideration received by the decedent should be included in the gross estate. If the relinquishment of any such power, without such consideration, is not admitted or shown to have been in contemplation of death, but was made within two years prior to decedent's death, and affected the interest or interests (whether arising from one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggregate value, at the time of such death, in excess of \$5,000, then, to the extent of such excess, such relinquishment is, unless shown to the contrary, deemed to have been made in contemplation of death. (See article 15.)

GROSS ESTATE—PROPERTY HELD JOINTLY

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated— * * *

(e) To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: *Provided*, That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further*, That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants; * * *

SEC. 804. Revenue Act of 1932.

Section 303(d) of the Revenue Act of 1926 is amended by adding at the end thereof a new sentence to read as follows:

"For the purposes of this title, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration 'in money or money's worth'."

SEC. 404. Revenue Act of 1934.

So much of section 302 of the Revenue Act of 1926 as reads as follows: "The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated" is amended to read as follows: "The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside the United States".

ART. 22. Property held jointly or as tenants by the entirety.—The foregoing provisions of the statute extend to joint ownerships wherein the right of survivorship exists, regardless of when such ownerships were created. The statute specifically reaches property held jointly by the decedent and any other person or persons, or by the decedent and spouse as tenants by the entirety, or deposited with any person

or institution carrying on a banking business in the name of the decedent and any other person and payable to either or the survivor, provided the decedent contributed toward the acquisition of the property so held or deposited, or acquired it by gift, bequest, devise, or inheritance. This section of the statute applies to all classes of property, whether real or personal, in the case the survivor takes the entire interest therein by right of survivorship, and no interest therein forms a part of the decedent's estate for purposes of administration. It has no reference to property held by the decedent and any other person or persons as tenants in common.

ART. 23. Taxable portion.—The entire value of such property is *prima facie* a part of the decedent's gross estate. But it is not the intent of the statute that there should be so included a greater part or proportion thereof than is represented by an outlay of funds, which, in the first instance, were decedent's own, or more than a fractional part equal to that of the other joint owner should neither have parted with any consideration in its acquirement. Facts, which in a given case bring it within any one of the exceptions enumerated in the statute, may be submitted by the executor.

Whether the value of the entire property, or only a part, or none of it, enters into the make-up of the gross estate depends upon the following considerations: (1) So much of the property (whether the whole, or a part thereof) as originally belonged to the other joint owner, and which at no time in the past had been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth, forms no part of the decedent's gross estate. (2) If the facts are otherwise the same as in (1), but the decedent paid to such other joint owner a consideration for the interest by him (the decedent) acquired in the property, then such portion of the value of the property, proportionate to the consideration so paid, constitutes a part of the gross estate. (3) If the property, or a part thereof, or a part of the consideration wherewith it was acquired, had at any time been acquired by the other joint owner from the decedent as a gift, or for less than an adequate and full consideration in money or money's worth, then such portion of the value of the entire property, proportionate to the consideration, if any, which in the first instance was paid from such other joint owner's own funds, forms no part of the gross estate. (4) If the property was acquired by the decedent and his or her surviving spouse as tenants by the entirety by gift, will, or inheritance, then but one-half of the value of the property becomes a part of the gross estate. (5) If acquired by the decedent and the other joint owner as joint tenants by gift, will, or inheritance,

and their interests are not otherwise specified or fixed by law, then one-half only of the value of the property is a part of the gross estate; or, if so acquired by the decedent and two or more persons, and the interests of the several joint tenants are not otherwise determinable, then the decedent and the other joint tenants surviving him shall each be deemed the owner of an equal fractional part, and the value of one only of such fractional parts is to be included in the gross estate.

The following are given as illustrative: (a) If the decedent furnished the entire purchase price, the entire property should be included in the gross estate; (b) if the decedent furnished a part only of the purchase price, only a corresponding portion of the property should be so included; (c) if the decedent, prior to the acquisition of the property by himself and the other joint owner, gave the latter a sum of money which later constituted such other joint owner's entire contribution to the purchase price of the property, the entire value of the property should be included; (d) if the other joint owner, prior to the acquirement of the property, received from the decedent, for less than an adequate and full consideration in money or money's worth, property which thereafter became, as such, or in a converted form, part of the purchase price of the property, the value of the property to be included is to be reduced proportionately to the consideration furnished by the other joint owner in the original transaction; (e) if the decedent furnished no part of the purchase price, no part of the property should be included; (f) if the decedent and spouse acquired the property by will as tenants by the entirety, one-half of the value of the property should be included.

For the purposes of the estate tax, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, is not to any extent a consideration in money or money's worth.

GROSS ESTATE—PROPERTY PASSING UNDER POWER OF APPOINTMENT

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated— * * *

(f) To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth; and * * *.

SEC. 803. Revenue Act of 1932. * * *

(b) Section 302(f) of the Revenue Act of 1926 is amended to read as follows:

"(f) To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of or intended to take effect in possession or enjoyment at or after his death, or (3) by deed under which he has retained for his life or any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession or enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth; and" * * *

SEC. 302. * * *

(i) If any one of the transfers, trusts, interests, rights, or powers, enumerated and described in subdivisions (c), (d), and (f) of this section is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

SEC. 804. Revenue Act of 1932.

Section 303(d) of the Revenue Act of 1926 is amended by adding at the end thereof a new sentence to read as follows:

"For the purposes of this title, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration 'in money or money's worth'."

SEC. 404. Revenue Act of 1934.

So much of section 302 of the Revenue Act of 1926 as reads as follows: "The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated" is amended to read as follows: "The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside the United States"

ART. 24. Property passing under general power of appointment.—The value of all property passing under a general power of appointment must be included in the gross estate of the person exercising the power (known as the donee, or appointor) if the power is exercised by will and such donee dies after the enactment of the Revenue Act of 1918. It should be so included if the power is exercised by deed or other instrument executed subsequent to September 8, 1916, in contemplation of death. (See article 16.) It should also be so included

if the power is exercised by deed or other instrument with the intent that the transfer shall take effect in possession or enjoyment at or after the death of the donee of the power. (For description of transfers included in the phrase, "intended to take effect in possession or enjoyment at or after * * * death," and the taxability thereof with reference to when made and when the death occurred, see articles 17, 18, and 19.) The statute, however, does not require inclusion in the gross estate of the value of the appointed property in the case of a bona fide sale thereof by the donee of the power for an adequate and full consideration in money or money's worth.

Only property passing under a general power should be included. Ordinarily a general power is one to appoint to any person or persons in the discretion of the donee of the power. If the donee is required to appoint to a specified person or class of persons, the property should not be included in his gross estate. If the decedent died prior to the effective date of the Revenue Act of 1918, the value of the appointed property is not to be so included. Duplicate copies of the instrument granting the power and of the instrument by which the power was exercised, one of each to be certified or verified, must be filed with Form 706 in all cases, unless the decedent was a nonresident, in which case only one copy of each instrument, certified or verified, is required.

GROSS ESTATE—INSURANCE

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—* * *

(g) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over \$40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life. * * *

ART. 25. **Taxable insurance.**—The statute provides for the inclusion in the gross estate of insurance taken out by the decedent upon his own life, as follows: (a) All insurance receivable by, or for the benefit of, the estate; (b) all other insurance to the extent that it exceeds in the aggregate \$40,000.

The term "insurance" refers to life insurance of every description, including death benefits paid by fraternal beneficial societies, operating under the lodge system. Insurance is considered to be taken out by the decedent in all cases, whether or not he makes the application, if he pays the premiums either directly or indirectly, or they are paid by a person other than the beneficiary, or decedent possesses any of the legal incidents of ownership in the policy. Legal incidents of ownership in the policy include, for example: The right

of the insured or his estate to its economic benefits, the power to change the beneficiary, to surrender or cancel the policy, to assign it, to revoke an assignment, to pledge it for a loan, or to obtain from the insurer a loan against the surrender value of the policy, etc. The decedent possesses a legal incident of ownership if the rights of the beneficiaries to receive the proceeds are conditioned upon the beneficiaries surviving the decedent.

ART. 26. Insurance in favor of the estate.—The provision requiring the inclusion in the gross estate of all insurance receivable by the executor, without any exemption, applies to policies made payable to the decedent's estate or his executor or administrator, and all insurance which is in fact receivable by, or for the benefit of, the estate. It includes insurance taken out to provide funds to meet the estate tax, and any other taxes or charges which are enforceable against the estate. The manner in which the policy is drawn is immaterial so long as there is an obligation, legally binding upon the beneficiary, to use the proceeds in payment of such taxes or charges. The time when the policy was executed and delivered is also immaterial, the proceeds being includible in the gross estate though the policy was issued prior to the enactment of the Revenue Act of 1918. If the decedent took out insurance in favor of another person or corporation as collateral security for a loan or other accommodation, and either directly or indirectly paid the premiums thereon, the insurance is considered to be receivable for the benefit of the estate. The amount of the loan outstanding at decedent's death, with interest accrued thereon to that date, will be deductible in determining the net estate. (See article 29.)

ART. 27. Insurance receivable by other beneficiaries.—The statute requires the inclusion in the gross estate of the decedent of the proceeds of any policy, or the aggregate proceeds of all policies, not receivable by or for the benefit of decedent's estate, to the extent that such proceeds exceed \$40,000, regardless of when the policy was or the policies were issued, if the decedent possessed at the time of his death any of the legal incidents of ownership.

The estate is entitled to only one exemption of \$40,000 upon insurance receivable by beneficiaries other than the estate. For example, if the decedent left life insurance payable to three such beneficiaries in amounts of \$10,000, \$40,000, and \$50,000 (total, \$100,000), the full amount should be listed on the return and therefrom subtracted the \$40,000 exemption as provided in Schedule C of Form 706. The word "beneficiaries," as used in reference to the \$40,000 exemption, means persons entitled to the actual enjoyment of the insurance money.

ART. 28. Valuation of insurance.—The amount to be returned if the policy is payable to or for the benefit of the estate is the amount receivable. If the proceeds of a policy are payable to a beneficiary other than to or for the benefit of the estate, the amount to be listed on Schedule C of the return is the full amount receivable. (For taxable portion see article 27.) In case the proceeds of a policy are made payable to the beneficiary in the form of an annuity for life or for a term of years, there should be listed on Schedule C the one sum payable at death under an option which could have been exercised either by the insured or by the beneficiary, or if no option was granted, the sum used by the insurance company in determining the amount of the annuity.

With the return there should be filed a certificate from the insurance company showing, with respect to each policy, the following:

- (a) The face amount of the policy.
- (b) The amount of any indebtedness to the company which reduced the amount otherwise payable.
- (c) The amount of accumulated dividends.
- (d) The amount of postmortem dividends.
- (e) Any other facts affecting the value. (See next paragraph.)
- (f) The value as of the date of death of the insured of the benefits payable under the policy.

In the case of any policy providing for deferred payments (other than payments measured by the facts disclosed under (a), (b), (c), and (d), above), the certificate should include the following information:

- (g) The provisions with respect to the deferred payments or to the installments.
- (h) The amounts of the deferred payments or installments.
- (i) If the number of installments to be paid may be measured by the life of any individual, the date of birth of such individual.
- (j) The amount applied by the insurance company as a single premium representing the purchase of the installment benefits.
- (k) The basis (Mortality Table and rate of interest) employed by the insurance company in valuing the installment benefits.

GROSS ESTATE—RETROACTIVE PROVISIONS

SEC. 302. * * * (h) Except as otherwise specifically provided therein subdivisions (b), (c), (d), (e), (f), and (g) of this section shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after the enactment of this Act.

DEDUCTIONS—ESTATES OF CITIZENS OR RESIDENTS ADMINISTRATION EXPENSES, CLAIMS, ETC.

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages upon, or any indebtedness in respect to, property (except, in the case of a resident decedent, where such property is not situated in the United States), to the extent that such claims, mortgages, or indebtedness were incurred or contracted bona fide and for an adequate and full consideration in money or money's worth, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, or from theft, when such losses are not compensated for by insurance or otherwise, and such amounts reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or any estate, succession, legacy, or inheritance taxes; * * *.

SEC. 805. Revenue Act of 1932.

Section 303(a)(1) of the Revenue Act of 1926, as amended, is amended to read as follows:

“(1) Such amounts—

“(A) for funeral expenses,

“(B) for administration expenses,

“(C) for claims against the estate,

“(D) for unpaid mortgages upon, or any indebtedness in respect to, property where the value of decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate, and

“(E) reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent,

as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or property taxes not accrued before his death, or any estate, succession, legacy, or inheritance taxes. The deduction herein allowed in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded upon a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth. There shall also be deducted losses incurred during the settlement of estates arising from fires, storms, shipwrecks, or other casualties, or from theft, when such losses are not compensated for by insurance or otherwise, and if at the time of the filing of the return such losses have not been claimed as a deduction for income tax purposes in an income tax return.”

SEC. 804. Revenue Act of 1932.

Section 303(d) of the Revenue Act of 1926 is amended by adding at the end thereof a new sentence to read as follows:

"For the purposes of this title, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration 'in money or money's worth'."

SEC. 403. Revenue Act of 1934.

(a) Section 303(a) of the Revenue Act of 1926, as amended, is amended by striking out "In the case of a resident" and inserting in lieu thereof "In the case of a citizen or resident of the United States"

ART. 29. Deduction of administration expenses, claims, etc.—In order to be deductible under the foregoing provision of the statute, the item must fall within one of the several classes of deductions specifically enumerated therein, and must also, except in the case of deductible losses during the administration of the estate, be one the payment of which out of the estate is authorized by the laws of the jurisdiction under which the estate is being administered. Unless both of these conditions exist the item is not deductible. If the item is not one of those described it is not deductible merely because payment is allowed by the local law. If the amount which may be expended for the particular purpose is limited by the local law no deduction in excess of such limitation is permissible. If a claim against the estate, an unpaid mortgage, or an indebtedness is founded upon a promise or agreement, the deduction therefor is limited to the extent that the liability was contracted bona fide and for an adequate and full consideration in money or money's worth. A relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, is not to any extent a consideration in money or money's worth.

An item may be entered on the return for deduction though the exact amount thereof is not then known, provided it is ascertainable with reasonable certainty, and will be paid. No deduction may be taken upon the basis of a vague or uncertain estimate. In the event the amount of the liability was unascertainable at the time of final audit of the return by the Commissioner, and, as a consequence, deduction was not allowed therefor in such audit, and subsequently the amount of the liability is ascertained, relief may be sought as provided by articles 76 and 99.

ART. 30. Effect of court decree.—The decision of a local court as to the amount of a claim or administration expense will ordinarily be accepted if the court passes upon the facts upon which deductibility

depends. If the court does not pass upon such facts its decree will, of course, not be followed. For example, if the question before the court is whether a claim should be allowed, the decree allowing it will ordinarily be accepted as establishing the validity and amount of the claim. The decree will not necessarily be accepted even though it purports to decide the facts upon which deductibility depends. It must appear that the court actually passed upon the merits of the case. This will be presumed in all cases of an active and genuine contest. If the result reached appears to be unreasonable, this is some evidence that there was not such a contest, but it may be rebutted by proof to the contrary. If the decree was rendered by consent, it will be accepted, provided the consent was a bona fide recognition of the validity of the claim—not a mere cloak for a gift—and was accepted by the court as satisfactory evidence upon the merits. It will be presumed that the consent was of this character, and was so accepted, if given by all parties having an interest adverse to the claimant. The decree will not be accepted if it is at variance with the law of the State; as, for example, an allowance made to an executor in excess of that prescribed by statute.

ART. 31. Funeral expenses.—An executor may deduct such amounts for funeral expenses as are actually expended by him and, under the laws of the local jurisdiction, are payable out of the decedent's estate. A reasonable expenditure by the executor for a tombstone, monument, mausoleum, or for a burial lot, either for the decedent or his family, may be deducted under this heading, provided such an expenditure is allowable by the local law. Included in funeral expenses is the cost of transportation of the person bringing the body to the place of burial.

ART. 32. Administration expenses.—The amounts deductible from the gross estate as "administration expenses" are such expenses as are actually and necessarily incurred in the administration of the estate; that is, in the collection of assets, payment of debts, and distribution among the persons entitled. The expenses contemplated in the law are such only as attend the settlement of an estate by the legal representative preliminary to the transfer of the property to individual beneficiaries or to a trustee, whether such trustee is the executor or some other person. Expenditures not essential to the proper settlement of the estate, but incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions. Administration expenses include (1) executor's commissions; (2) attorney's fees; (3) miscellaneous expenses. Each of these classes is considered separately in articles 33 to 35, inclusive.

ART. 33. Executor's commissions.—The executor or administrator, in filing the return, may deduct his commissions in such an amount

as has actually been paid or which at that time it is reasonably expected will be paid, but no deduction may be taken if no commissions are to be collected. In the case the amount of the commissions has not been fixed by decree of the proper court, the deduction will be allowed on the final audit of the return provided: (1) That the Commissioner is reasonably satisfied that the commissions claimed will be paid; (2) that the amount entered as a deduction is within the amount allowable by the laws of the jurisdiction wherein the estate is being administered; and (3) that it is in accordance with the usually accepted practice in said jurisdiction in estates of similar size and character. In the case the commissions claimed have not been awarded by the proper court the Commissioner on final audit may disallow the deduction in part or in whole, as the circumstances in his judgment justify, subject to such future adjustment as the facts may later require. If the deduction is allowed in advance of payment and payment is thereafter waived, it shall be the duty of the executor to notify the Commissioner and pay the tax resulting therefrom, together with interest. Executors should note that the commissions received as compensation for their services constitute taxable income and that the amounts received or receivable by them as such compensation are cross-referenced for income-tax purposes.

A bequest or devise to the executor in lieu of commissions is not deductible. If, however, the decedent fixed by his will the compensation payable to the executor for services to be rendered in the administration of the estate, deduction may be taken to the extent that the amount so fixed does not exceed the compensation allowable by the local law or practice.

Amounts paid as trustees' commissions do not constitute expenses of administration and are not deductible, whether received by the executor acting in the capacity of a trustee or by a separate trustee as such.

ART. 34. Attorney's fees.—The executor or administrator, in filing the return, may deduct such an amount as attorney's fees as has actually been paid or which at that time it is reasonably expected will be paid. If on the final audit of a return the fees claimed have not been awarded by the proper court and paid, the deduction will be allowed, provided the Commissioner is reasonably satisfied that the amount claimed will be paid and that it does not exceed a reasonable remuneration for the services rendered, taking into account the size and character of the estate and the local law and practice. If the attorney's fees have not been paid at the time of the final audit of the return the Commissioner may disallow such part, or all, of the deduction as the circumstances may warrant, subject to such future adjustment as the facts may require.

Attorney's fees incident to litigation instituted by the beneficiaries as to their respective interests do not constitute a proper deduction, inasmuch as expenses of this character are properly charges against the beneficiaries personally and are not administration expenses as contemplated by the statute.

ART. 35. Miscellaneous administration expenses.—This includes such expenses as court costs, surrogates' fees, accountants' fees, appraisers' fees, clerk hire, etc. Expenses necessarily incurred in preserving and distributing the estate are deductible, including the cost of storing or maintaining property of the estate, if it is impossible to effect immediate distribution to the beneficiaries. Expenses for preserving and caring for the property may not include additions or improvements; nor will such expenses be allowed for a longer period than the executor is required to retain the property. A brokerage fee for selling property of the estate is deductible if the sale is necessary in order to pay the decedent's debts, the expenses of administration, or to effect distribution. Other expenses attending the sale are deductible, such as the fees of an auctioneer, if it is reasonably necessary to employ one.

ART. 36. Claims against the estate.—The amounts that may be deducted under this heading are such only as represent personal obligations of the decedent existing at the time of his death, whether then matured or not, and any interest thereon which had accrued at time of death. Only claims enforceable against the estate may be deducted. If the claim is founded upon a promise or agreement the deduction therefor is limited to the extent that the liability was contracted bona fide and for an adequate and full consideration in money or money's worth. A pledge or a subscription, evidenced by a promissory note or otherwise, even though enforceable against the estate, is deductible only to the extent such pledge or subscription was made bona fide and for an adequate and full consideration in cash or its equivalent. See article 29 as to relinquishment or promised relinquishment of dower and similar interests. Liabilities imposed by law or arising out of torts are deductible.

ART. 37. Taxes.—The deduction for property taxes is limited to such taxes as accrued prior to the date of decedent's death. Property taxes accrue on the date the ownership of the property determines the liability for such taxes.

Taxes upon income received during the decedent's lifetime are deductible, including interest accrued thereon at time of death, but taxes upon income received after death are not deductible. No estate, succession, legacy, or inheritance tax is deductible.

ART. 38. Unpaid mortgages.—The full amount of unpaid mortgages upon, or any indebtedness in respect to, property included in the

gross estate may be deducted, including interest which had accrued at the time of death, whether payable at that time or not, but only to the extent that the liability for such mortgages or indebtedness was contracted bona fide and for an adequate and full consideration in money or money's worth. The full value of the property, without any deduction for mortgages or indebtedness, must be returned as part of the gross estate. Real property situated outside the United States does not form a part of the gross estate, and no deduction may be taken of any mortgage thereon, or any indebtedness in respect thereto.

ART. 39. Losses from casualties or theft.—There may be deducted under this heading losses incurred during the settlement of the estate arising from fires, storms, shipwrecks, or other casualties, or from theft, if such losses are not compensated for by insurance or otherwise. In the case of a decedent who died subsequent to the effective date of the Revenue Act of 1932, such losses are not deductible if, at the time of the filing of the estate tax return, such losses had been claimed as a deduction for income tax purposes in an income tax return. If the loss is partly compensated, the excess of the loss over such compensation may be deducted. Losses not of the nature described are not deductible. In order to be deductible a loss must occur during the settlement of the estate. If a loss with respect to an asset occurs after distribution thereof to the distributee it may not be deducted.

ART. 40. Support of dependents.—The support during the settlement of the estate of dependents of the decedent is deductible, but pursuant to the following rules:

(1) In order to be deductible, the allowance must be authorized by the laws of the jurisdiction in which the estate is being administered, and not in excess of what is reasonably required.

(2) The allowance for which deduction may be made is limited to support during the settlement of the estate. Any allowance for a more extended period is not deductible.

(3) There must be an actual disbursement from the estate to the dependents, but after payment has been made the right of deduction is not affected by the fact that the dependents do not expend the entire amount for their support during the settlement of the estate.

DEDUCTIONS—PROPERTY PREVIOUSLY TAXED

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate— * * *

(2) An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any per-

son who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from such donor by gift or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under the Revenue Act of 1924, or an estate tax imposed under this or any prior Act of Congress was paid by or on behalf of the donor or the estate of such prior decedent as the case may be, and only in the amount of the value placed by the Commissioner on such property in determining the value of the gift or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate and not deducted under paragraph (1) or (3) of this subdivision; * * *.

SEC. 806. Revenue Act of 1932.

(a) Section 303(a) (2) of the Revenue Act of 1926 is amended to read as follows:

"(2) An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under the Revenue Act of 1932, or an estate tax imposed under this or any prior Act of Congress, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate. Where a deduction was allowed of any mortgage or other lien in determining the gift tax, or the estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under this paragraph shall be reduced by the amount so paid. The deduction allowable under this paragraph shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under paragraphs (1), (3), and (4) of this subdivision as the amount otherwise deductible under this paragraph bears to the value of the decedent's gross estate. Where the property referred to in this paragraph consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction."

SEC. 402. Revenue Act of 1934.

Paragraph (2) of subdivision (a) and paragraph (2) of subdivision (b) of section 303 of the Revenue Act of 1926, as amended, are amended by inserting before the period at the end of the second sentence of each such paragraph a comma and the following: "and

only if in determining the value of the net estate of the prior decedent no deduction was allowable under this paragraph in respect of the property or property given in exchange therefor”.

SEC. 403. Revenue Act of 1934.

(a) Section 303 (a) of the Revenue Act of 1926, as amended, is amended by striking out “In the case of a resident” and inserting in lieu thereof “In the case of a citizen or resident of the United States”.

ART. 41. Deduction of the value of transfers previously taxed.—Should there be included in the decedent's gross estate the value of property received by him by gift from any person within five years prior to his death, or received by gift, bequest, devise, or inheritance from any person who died within five years prior to his death, or the value of property acquired in exchange for property so received, the statute authorizes a deduction in behalf thereof, subject to the following conditions and limitations, namely:

(a) *Conditions.*—

(1) The property respecting which the deduction is sought must have been received by the decedent as a gift within five years of the date of his death, or received by him by gift, bequest, devise, or inheritance from a prior decedent who died within five years of the date of the decedent's death.

(2) The property must be identified either as the same which the decedent so received or acquired in exchange therefor.

(3) The property must have formed a part of the gross estate, situated in the United States, of such prior decedent, or have been included in the total amount of gifts of a donor.

(4) An estate tax by or on behalf of the estate of such prior decedent, or a gift tax by or on behalf of the donor, must have actually been paid (the mere filing of a return for such estate or donor not being sufficient).

(5) If the decedent died after 11.40 a. m., eastern standard time, May 10, 1934, no such deduction, in respect to the property or property given in exchange therefor, must have been allowable in determining the value of the net estate of the prior decedent.

(b) *Limitations.*—

(A) If the decedent died prior to 5 p. m., eastern standard time, June 6, 1932—

(1) The deduction is limited to the value of the property, as finally determined, in determining the value of the gift or the gross estate of the prior decedent, and the value, of such property, included in the decedent's gross estate, whichever is lower.

(2) The deduction, as limited in (1), is reduced by the total amount paid prior to the decedent's death on any mortgage or other lien on the property previously taxed, provided such mort-

gage or other lien was deducted in determining the estate tax of the prior decedent or the gift tax of the donor.

(3) The deduction for property previously taxed, or that acquired in exchange therefor, is not diminished by amounts deducted under paragraph (1) or (3) of subdivision (a) of section 303 merely because such amounts were paid out of said property. On the other hand, however, the deduction is diminished to the extent that the value of the property so taxed, or of that acquired in exchange therefor, is deducted under said paragraph (1) or (3) on account of such losses arising from casualty or theft as are incurred with respect to said property during the settlement of the estate, or on account of such transfers of specific items of said property as the decedent made in his lifetime or by his will, for public, religious, charitable, scientific, literary, or educational purposes, and the deduction is further diminished to the extent that the amounts allowed under said paragraph (1) or (3), other than those relating to said losses or transfers, are in excess of the value of the decedent's property not previously taxed but subject to debts and charges. The burden of proving that the estate is entitled to the deduction rests upon the executor. The provisions of this paragraph apply in like manner to cases controlled by the Revenue Acts of 1921 and 1924.

(B) If the decedent died after 5 p. m., eastern standard time, June 6, 1932—

(1) The deduction is limited to the value of the property, or if there are two or more items of such property then to the aggregate value of such items, as finally determined, in determining the value of the gift or the gross estate of the prior decedent, and the value of such property, or aggregate value if there are two or more items of such property, included in the decedent's gross estate, whichever is lower.

(2) The deduction, as limited in (1), is reduced by the total amount paid prior to the decedent's death on any mortgage or other lien on the property previously taxed, provided such mortgage or other lien was deducted in determining the estate tax of the prior decedent or the gift tax of the donor.

(3) The deduction is further reduced on account of the deductions allowed under paragraphs (1), (3), and (4) of subdivision (a) of section 303. This deduction is that proportion of such deductions which the amount otherwise deductible for property previously taxed bears to the value of the decedent's gross estate.

Under the provisions of the Revenue Act of 1918 the deduction was available only in the case the prior decedent died after October 3, 1917, the date of the passage of the Revenue Act of 1917, and the decedent's death occurred subsequent to the effective date of the Revenue Act of 1918. But under the provisions of the Revenue Act of 1921 the right to such deduction is made available to the estates of all decedents dying since September 8, 1916. If, under the provisions of the Revenue Act of 1918, or any prior Act of Congress imposing an estate tax, the deduction was not available, the right thereto is to be determined in accordance with the provisions of paragraph (2) of subdivision (a) of section 403 of the Revenue Act of 1921, but if available under the Revenue Act of 1918, it is governed by paragraph (2) of subdivision (a) of section 403 of that Act. Section 1100 (c) of the Revenue Act of 1924 provides that the retroactive benefit of section 403 of the Revenue Act of 1921 is not lost by the repeal thereof. If the tax has been paid without taking the deduction, a claim for refund may be made, as provided by article 99.

Example: The decedent died June 15, 1931. The value of his gross estate for the purpose of the estate tax is \$1,000,000, of which \$200,000 is the value of insurance in excess of \$40,000 payable to beneficiaries other than the estate, \$600,000 is the value of property previously taxed, and \$200,000 is the value of stocks and bonds not previously taxed. The property previously taxed was inherited from the decedent's father, who died on June 1, 1929. The tax on the father's estate was paid. The property previously taxed may be set forth as follows:

	Decedent's estate	Prior estate	Lower value
Item 1.....	\$150,000	\$100,000	\$100,000
Item 2.....	40,000	85,000	40,000
Item 3.....	110,000	125,000	110,000
Item 4.....	130,000	120,000	120,000
Item 5.....	90,000	115,000	90,000
Item 6.....	80,000	50,000	50,000
Totals.....	600,000	595,000	510,000

Item 1, \$150,000, is specifically bequeathed to a charitable organization. Administration expenses and debts of the decedent amount to \$250,000.

The decedent having died prior to 5 p. m., eastern standard time, June 6, 1932, the deduction is limited to the value of each item placed upon it by the Commissioner in the prior estate or gift, or to the value of each item included in the decedent's gross estate, whichever is the lower. Accordingly, the total amount of the deduc-

tion thus ascertained is \$510,000. In accordance with paragraph (A) (3) of this article the deduction must be diminished to the extent of the value of any specific item bequeathed to a charitable organization. As item 1 was so bequeathed the amount of \$510,000 is diminished by \$100,000, the value of item 1 as included in the deduction for property previously taxed. Also, in accordance with paragraph (A) (3) of this article the deduction must be further diminished to the extent that the deductions for administration expenses and debts, or \$250,000, exceed the value of the decedent's property subject to debts and charges and not previously taxed, or \$200,000. This excess is \$50,000. The deduction for property previously taxed is, therefore, further diminished by \$50,000, and the amount of the deduction allowable for property previously taxed is \$360,000. The total deductions of \$860,000 (administration expenses and debts, \$250,000; charitable bequest, \$150,000; property previously taxed, \$360,000; and specific exemption, \$100,000) subtracted from the total gross estate of \$1,000,000 leaves a net estate of \$140,000.

Example: The decedent died June 15, 1932. The value of his gross estate for the purpose of the estate tax is \$1,000,000, of which \$200,000 is the value of insurance in excess of \$40,000 payable to beneficiaries other than the estate, \$600,000 is the value of property previously taxed, and \$200,000 is the value of stocks and bonds not so taxed. The property previously taxed was inherited from the decedent's father who died on June 1, 1929. The tax on the father's estate was paid. The property previously taxed may be set forth as follows:

	Decedent's estate	Prior estate
Item 1.....	\$150,000	\$100,000
Item 2.....	40,000	85,000
Item 3.....	110,000	125,000
Item 4.....	130,000	120,000
Item 5.....	90,000	115,000
Item 6.....	80,000	50,000
Totals.....	600,000	595,000

Item 1, \$150,000, is specifically bequeathed to a charitable organization free of estate, inheritance, legacy, or succession taxes. Administration expenses and debts of the decedent amount to \$150,000. At the time of the father's death there was an unpaid mortgage of \$60,000 on item 5 which was deducted in determining the estate tax liability of the father's estate. This mortgage was entirely paid before the son's death.

The decedent having died after 5 p. m., eastern standard time, June 6, 1932, the deduction for property previously taxed is limited

to the aggregate value of the items constituting such property as finally determined in the case of the prior decedent or donor, or to the aggregate value of such property included in the decedent's gross estate, whichever is the lower. Accordingly, the amount of the deduction for property previously taxed thus ascertained is \$595,000. In accordance with paragraph (B) (2) of this article this deduction is reduced by \$60,000, the amount paid in the discharge of the mortgage on item 5. The deduction thus reduced is \$535,000.

The deduction is further reduced by a proportionate amount computed under the provisions of paragraph (B) (3) of this article. As the amount of the specific exemption authorized by the Revenue Act of 1926 is greater than the amount of the specific exemption authorized by the Revenue Act of 1932, the amount so computed in determining the deduction for the purpose of the estate tax imposed by the Revenue Act of 1926 differs from the amount so computed in determining the deduction for the purpose of the additional tax imposed by the Revenue Act of 1932.

In the present example the deductions, except for property previously taxed, amount to \$400,000, as follows: \$150,000 for the charitable bequest, \$150,000 for administration expenses and debts, and \$100,000 for the specific exemption authorized by the Revenue Act of 1926. The proportionate amount by which the deduction for property previously taxed is further reduced for the purpose of the estate tax imposed by the Revenue Act of 1926 is ascertained by multiplying the above mentioned \$400,000 by .535, the ratio which the said \$535,000 bears to the value of the gross estate, \$1,000,000, and amounts to \$214,000. The difference between \$535,000 and \$214,000 is \$321,000, the amount in which the deduction for property previously taxed is allowable in determining the tax imposed by the Revenue Act of 1926. The total amount of the deductions, \$721,000, subtracted from the value of the gross estate, \$1,000,000, leaves a net estate of \$279,000 the transfer of which is subject to the tax imposed by the Revenue Act of 1926.

The Revenue Act of 1932 provides for a specific exemption of \$50,000. Accordingly, the deductions, other than the deduction for property previously taxed, allowable under that Act amount to \$350,000, and .535 of that amount is \$187,250, the proportionate amount by which the deduction for property previously taxed is further reduced for the purposes of the additional tax imposed by the Revenue Act of 1932. The difference between \$535,000 and \$187,250 is \$347,750, the amount in which the deduction for property previously taxed is allowable in determining the additional tax imposed by the last-mentioned Act. The total amount of the deductions, \$697,750, subtracted from the value of the gross estate, \$1,000,000,

leaves a net estate of \$302,250, the transfer of which is subject to the additional tax imposed by the Revenue Act of 1932.

ART. 42. Property originally received.—If the property originally received from a donor or prior decedent is included in the decedent's gross estate, the executor must describe it fully and prove its identity.

ART. 43. Property acquired in exchange.—The deduction for substituted property is not limited to property acquired by a single exchange of property received from the donor or the prior decedent, but extends to substituted property acquired by the process of exchange, whether through the medium of money or otherwise, irrespective of the number of conversions involved, including the proceeds of the sale or other disposition of property so received or acquired, as well as property acquired by purchase with the proceeds of the sale or other disposition of such property so long as such proceeds can be conclusively identified as such and clearly traced to the property originally so received.

The executor must describe and fully identify both the property originally received from the donor or the prior decedent and the substituted property for which deduction is claimed, giving the date and stating the nature of the transaction by which the substituted property was acquired, together with the name and address of the transferee. If the transaction was evidenced by written instrument of public record, precise reference to such record must be made, and if by instrument not of record, a verified copy thereof must be supplied. If there was no written instrument, there must be furnished the affidavit of one or more persons having personal knowledge of the matter, setting forth the facts in connection therewith.

The burden of identifying property as acquired in exchange for property included in the gross estate of the prior decedent for Federal estate tax purposes rests upon the executor.

DEDUCTIONS—TRANSFERS FOR PUBLIC, CHARITABLE RELIGIOUS, ETC., USES

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate— * * *

(3) The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or a fraternal society, order, or association operat-

ing under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate; and * * *.

SEC. 807. Revenue Act of 1932.

Sections 303(a) (3) and 303(b) (3) of the Revenue Act of 1926 are amended by inserting after the first sentence of each a new sentence to read as follows:

"If the tax imposed by section 301, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes."

SEC. 403. Revenue Act of 1934.

(a) Section 303 (a) of the Revenue Act of 1926, as amended, is amended by striking out "In the case of a resident" and inserting in lieu thereof "In the case of a citizen or resident of the United States".

SEC. 406. Revenue Act of 1934.

Section 303 (a) (3) and section 303 (b) (3) of the Revenue Act of 1926, as amended, are amended by inserting after "individual", wherever appearing therein, a comma and the following: "and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation".

ART. 44. Transfers for public, charitable, religious, etc., uses.—Deduction may be taken of the value of all property transferred by will or by the decedent in his lifetime not to exceed the value of the transferred property required to be included in the gross estate if in either case the property was transferred (1) to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes; or (2) to or for the use of any corporation or association organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals), if no part of the net earnings of the corporation or association inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; or (3) to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, if such transfers, legacies, bequests, or devises are to be used by such trustee, trustees, fraternal society, order, or association exclusively for religious, charitable, scientific, literary, or

educational purposes, or for the prevention of cruelty to children or animals.

If a trust is created for both a charitable and a private purpose, deduction may be taken of the value of the beneficial interest in favor of the former only in so far as such interest is presently ascertainable, and hence severable from the interest in favor of the private use. Thus, if money or property is placed in trust to pay the income to an individual during his life, or for a term of years, and then to pay or deliver the principal to a charitable corporation, or to apply it to a charitable purpose, the present value of the remainder is deductible. To determine the present value of such remainder use the appropriate factor in column 3 of Table A or B of article 13.

The deduction is not limited, in the estates of residents (or of citizens who died after the enactment of the Revenue Act of 1934), to transfers to domestic corporations or associations, or to trustees for use within the United States.

If the decedent died after 5 p. m., eastern standard time, June 6, 1932, and under the terms of the will, or the law of the jurisdiction wherein the estate is administered, or the law of the jurisdiction imposing the particular tax, the Federal estate tax (including the additional estate tax imposed by the Revenue Act of 1932), or any estate, succession, legacy, or inheritance tax is payable in whole or in part out of any bequest, legacy, or devise deductible under section 303 (a) (3), the sum deductible is the amount of such bequest, legacy, or devise so reduced. Thus, if \$50,000 is bequeathed for a charitable purpose and is subjected to a State inheritance tax of \$5,000, the amount deductible is \$45,000; or if a life estate is bequeathed to an individual with remainder over to a charitable corporation, and by the local law the legacy tax upon the life estate is taken out of the corpus with the result that the charitable corporation will be entitled to receive only the amount of the fund less the tax, the deduction is limited to the present worth, as of the date of the testator's death, of the remainder of the fund so reduced; or if the testator bequeaths his residuary estate, or a portion thereof, to charity, and his will contains a direction that certain inheritance taxes, otherwise payable from legacies in respect to which they were laid, shall be payable out of such residuary estate, the deduction may not exceed the bequest to charity thus reduced pursuant to the direction of the will; or if a residuary estate, or a portion thereof, be bequeathed to charity, and by the local law the Federal estate tax is payable out of the residuary estate, the deduction may not exceed that portion of the residuary estate bequeathed to charity as reduced by the Federal estate tax. Should the executor

desire a verification of his own computation before filing the return on Form 706, or should he wish the Bureau to make the computation for him in the first instance, he should accompany his request with a statement of the material facts.

ART. 45. Religious, charitable, scientific, and educational corporations.—A corporation or association to which such a transfer was made must meet four tests: (1) It must be organized and operated for one or more of the specified purposes; (2) it must be organized and operated exclusively for such purpose or purposes; (3) no part of its net earnings shall inure to the benefit of private stockholders or individuals; and (4) no substantial part of its activities shall be carrying on propaganda, or otherwise attempting, to influence legislation.

The estate is not deprived of the right to deduct the value of property so transferred by reason of the fact that private individuals are the recipients of the benefits which the corporation or association dispenses. Such right is, however, lost if any part of the net earnings of the corporation or association inures to the benefit of a private stockholder or individual.

ART. 46. Proof required.—In establishing the right of the estate to this deduction, the executor must submit:

(1) Duplicate copies of the will of the decedent, and of the order admitting the will to probate, one copy of each of which should be certified. Duplicate copies of any instrument in writing by which the decedent made a transfer of property in his lifetime the value of which is required by the statute to be included in his gross estate, and if the instrument is of record one copy thereof should be certified, and if not of record, one copy should be verified. The certified or verified copy should be forwarded by the collector to the Commissioner.

(2) An affidavit by the executor stating whether any action has been instituted to contest the will, or any bequest, or devise therein, the deduction of which from the gross estate is claimed, and whether, according to his information and belief, any such action is designed or contemplated.

(3) Such other documents or evidence as may be requested by the Commissioner.

ART. 47. Conditional bequests.—If the transfer is dependent upon the performance of some act or the happening of some event in order to become effective, it is necessary that the performance of the act or the occurrence of the event shall have taken place before the deduction can be allowed.

If the legatee, devisee, donee, or trustee is empowered to divert the property or fund, in whole or in part, to a use or purpose which

would have rendered it, to the extent that it is subject to such power, not deductible had it been directly so bequeathed, devised, or given by the decedent, deduction will be limited to that portion, if any, of the property or fund which is exempt from an exercise of such power.

SPECIFIC EXEMPTION

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate— * * *

(4) An exemption of \$100,000. * * *

SEC. 401. Revenue Act of 1932. * * *

(c) For the purposes of this section the value of the net estate shall be determined as provided in Title III of the Revenue Act of 1926, as amended, except that in lieu of the exemption of \$100,000 provided in section 303 (a) (4) of such Act, the exemption shall be \$50,000.

SEC. 403. Revenue Act of 1934.

(a) Section 303 (a) of the Revenue Act of 1926, as amended, is amended by striking out "In the case of a resident" and inserting in lieu thereof "In the case of a citizen or resident of the United States".

ART. 48. **Specific exemption.**—A specific exemption should be deducted in determining the net estate in the case of the estate of a resident. A specific exemption should also be deducted in the case of the estate of a citizen, regardless of residence, if the decedent died after 11.40 a. m., eastern standard time, May 10, 1934. The specific exemption deductible in determining the net estate upon which the tax is imposed by the Revenue Act of 1926 (in effect after 10.25 a. m., eastern standard time, February 26, 1926), is \$100,000. The specific exemption deductible in determining the net estate upon which the additional tax is imposed by the Revenue Act of 1932 (in effect after 5 p. m., eastern standard time, June 6, 1932), is \$50,000. If the decedent died prior to the enactment of the Revenue Act of 1926, the specific exemption is \$50,000. No specific exemption is authorized in the case of the estate of a nonresident alien, and no specific exemption is authorized in the case of the estate of a nonresident, regardless of citizenship, if the decedent died prior to 11.40 a. m., eastern standard time, May 10, 1934.

ESTATES OF NONRESIDENT ALIENS

SEC. 303. * * * (d) For the purpose of this title, stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States, and any property of which the decedent has made a transfer, by trust or otherwise, within the meaning of subdivision (c) or (d) of section 302, shall be deemed to be situated in the United States, if so situated either at the time of the transfer, or at the time of the decedent's death. * * *

(e) The amount receivable as insurance upon the life of a non-resident decedent, and any moneys deposited with any person carrying on the banking business, by or for a nonresident decedent who was not engaged in business in the United States at the time of his death, shall not, for the purpose of this title, be deemed property within the United States.

(f) Missionaries duly commissioned and serving under boards of foreign missions of the various religious denominations in the United States, dying while in the foreign missionary service of such boards, shall not, by reason merely of their intention to permanently remain in such foreign service, be deemed nonresidents of the United States, but shall be presumed to be residents of the State, the District of Columbia, or the Territories of Alaska or Hawaii wherein they respectively resided at the time of their commission and their departure for such foreign service.

SEC. 403. Revenue Act of 1934. * * *

(d) Section 303 (d) and (e) of such Act, as amended, are amended by striking out the phrase "nonresident decedent" wherever such phrase appears in such subdivisions and inserting in lieu thereof in each case "nonresident not a citizen of the United States".

ART. 49. Gross estate.—The gross estate of a citizen, alien, resident, and nonresident are made up in the same way. For computation of net estate of a nonresident alien (or a nonresident, regardless of citizenship, if death occurred prior to the enactment of the Revenue Act of 1934), see article 51. For meaning of the terms "citizens," "residents," and "nonresidents," and the presumption applying as to the residence of missionaries, see article 5.

ART. 50. Situs of property.—Real estate and tangible personal property are situated in the United States if physically therein. Certificates of stock, bonds, bills, notes, and other written evidences of intangible property which are treated as being the property itself are property situated in the United States if physically situated therein.

Except as provided in section 303 (e) intangible personal property has a situs within the United States if consisting of a property right issuing from or enforceable against a corporation (public or private) organized in the United States or a person who is a resident of the United States. As examples, the following may be given: Corporate stock issued by such a corporation, or a simple debt, bond, note, or other chose in action for which such a corporation or individual is liable. Under the provisions of section 303 (e) the amount receivable as insurance upon the life of a nonresident decedent (nonresident alien decedent if death occurred after the enactment of the Revenue Act of 1934) and any moneys deposited with any person carrying on the banking business by or for such a decedent not engaged in business in the United States at the time of his death shall not be deemed property within the United States.

Property of which the decedent has made a transfer taxable under the provisions of article 15 of these regulations is deemed to be situated in the United States if so situated either at the time of the transfer or at the time of the decedent's death. (See articles 15 to 21, inclusive.)

DEDUCTIONS—ESTATES OF NONRESIDENT ALIENS

SEC. 303. For the purpose of the tax the value of the net estate shall be determined— * * *

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—

(1) That proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated, but in no case shall the amount so deducted exceed 10 per centum of the value of that part of his gross estate which at the time of his death is situated in the United States;

(2) An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from such donor by gift or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under the Revenue Act of 1924, or an estate tax imposed under this or any prior Act of Congress was paid by or on behalf of the donor or the estate of such prior decedent as the case may be, and only in the amount of the value placed by the Commissioner on such property in determining the value of the gift or the gross estate of such prior decedent, and only to the extent that the value of such property is included in that part of the decedent's gross estate which at the time of his death is situated in the United States and not deducted under paragraph (1) or (3) of this subdivision; and

(3) The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used within the United States by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. The amount of the deduction under this paragraph for any

transfer shall not exceed the value of the transferred property required to be included in the gross estate.

(c) No deduction shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section 304 the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States.

SEC. 401. Revenue Act of 1928.

(a) Section 303 (b) (1) of the Revenue Act of 1926 (relating to deductions from the gross estate of a nonresident decedent) is amended by striking out: “, but in no case shall the amount so deducted exceed 10 per centum of the value of that part of his gross estate which at the time of his death is situated in the United States.”

(b) Subsection (a) of this section shall apply in the case of nonresident decedents dying after the enactment of this Act.

SEC. 806. Revenue Act of 1932. * * *

(b) Section 303 (b) (2) of the Revenue Act of 1926 is amended to read as follows:

“(2) An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under the Revenue Act of 1932, or an estate tax imposed under this or any prior Act of Congress, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in that part of the decedent's gross estate which at the time of his death is situated in the United States. Where a deduction was allowed of any mortgage or other lien in determining the gift tax, or the estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under this paragraph shall be reduced by the amount so paid. The deduction allowable under this paragraph shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under paragraphs (1) and (3) of this subdivision as the amount otherwise deductible under this paragraph bears to the value of that part of the decedent's gross estate which at the time of his death is situated in the United States. Where the property referred to in this paragraph consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction.”

SEC. 807. Revenue Act of 1932.

Sections 303(a) (3) and 303(b) (3) of the Revenue Act of 1926 are amended by inserting after the first sentence of each a new sentence to read as follows:

"If the tax imposed by section 301, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes."

SEC. 402. Revenue Act of 1934.

Paragraph (2) of subdivision (a) and paragraph (2) of subdivision (b) of section 303 of the Revenue Act of 1926, as amended, are amended by inserting before the period at the end of the second sentence of each such paragraph a comma and the following: "and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this paragraph in respect of the property or property given in exchange therefor".

SEC. 403. Revenue Act of 1934. * * *

(b) Section 303(b) of such Act, as amended, is amended by striking out "In the case of a nonresident" and inserting in lieu thereof "In the case of a nonresident not a citizen of the United States".

(c) Section 303(c) of such Act, as amended, is amended by striking out "in the case of a nonresident" and inserting in lieu thereof "in the case of a nonresident not a citizen of the United States".

SEC. 406. Revenue Act of 1934.

Section 303(a) (3) and section 303(b) (3) of the Revenue Act of 1926, as amended, are amended by inserting after "individual", wherever appearing therein, a comma and the following: "and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation".

ART. 51. Net estate.—The statute imposes the tax upon the transfer of only the portion of the estate of a nonresident alien (or of a nonresident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934) that was situated in the United States. In determining the net estate, the deductions specifically authorized for this class of cases may be taken from the portion of the gross estate situated in the United States.

ART. 52. Deduction of administration expenses, claims, etc.—In estates of nonresident aliens (or of nonresidents, regardless of citizenship, if the decedents died prior to the enactment of the Revenue Act of 1934), deductions from the gross estate may be taken, subject to the limitations herein subsequently to be referred to, for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, or from theft, if such losses are not compensated for by insurance or otherwise, amounts reasonably required and actually expended for the support during settlement of the estate of those dependent upon the decedent, as are allowed by the laws of the jurisdiction

under which the estate is being administered. Treatment of the several deductions enumerated above will be found in articles 29 to 40, inclusive. No deduction may be taken of any income taxes upon income received after the death of the decedent, or of any estate, succession, legacy, or inheritance taxes. It is immaterial whether the amounts to be deducted were incurred or expended within or without the United States, but certain limitations are imposed which do not apply to estates of residents or citizens (or of residents only, without regard to citizenship, if the decedents died prior to the enactment of the Revenue Act of 1934), namely: (1) Only that proportion of the aggregate thereof is deductible which the value of that part of the gross estate situated (within the meaning of the statute) in the United States, bears to the value of the entire gross estate, wherever situated; and if the decedent died prior to the effective date of the Revenue Act of 1928, no sum may be deducted in excess of 10 per cent of the value of that part of the gross estate situated in the United States. (See article 55.) The 10 per cent limitation does not apply to the deductions subsequently considered in articles 53 and 54. (2) No deduction whatever may be taken unless the executor includes in the return the value at the date of the decedent's death of that part of the gross estate not situated in the United States.

In order that the Commissioner may properly pass upon the items claimed as deductions, the executor should submit a certified copy of the schedule of liabilities, claims against the estate, and expenses of administration filed under the foreign death-duty act; or, if no such schedule was filed, a certified copy of the schedule of such liabilities, claims, and expenses filed with the foreign court in which administration was had; or, if items of deduction allowable under section 303 (b) (1) were not included in either such schedule, or if no such schedules were filed, then the affidavit of the foreign executor setting forth the facts relied upon as entitling the estate to the benefit of the particular deduction or deductions.

ART. 53. Deduction of the value of property previously taxed.—The right to deduct the value of property received by a nonresident alien decedent (or by a nonresident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934) by gift from any person within five years prior to his death, or by gift, bequest, devise, or inheritance from any person who died within five years prior to his death, or of the value of property acquired in exchange for property so received, is governed by the same rules as those applying to estates of residents (articles 41 to 43, inclusive), subject to the three following exceptions: (1) The deduction is decreased on account of the deductions allowable under the provisions of paragraphs (1) and (3) of subdivision (b). of

section 303 in lieu of the deductions allowable under paragraphs (1) and (3) of subdivision (a) of such section, or paragraphs (1), (3), and (4) of subdivision (a) if the decedent died after the effective date of the Revenue Act of 1932; (2) the property for which the deduction is claimed must be included in that part of the decedent's gross estate situated in the United States at the time of his death; and (3) the deduction is not available to any extent unless the executor includes in the return the value at the time of the decedent's death of that part of the gross estate not situated in the United States. (See article 52.)

ART. 54. Deduction of value of transfers for public, charitable, religious, etc., uses.—The right to deduct the value of property transferred by nonresident aliens (or nonresidents, regardless of citizenship, if decedents died prior to the enactment of the Revenue Act of 1934) for public, religious, charitable, scientific, literary, or educational purposes is governed by the same rules as those applying to estates of resident decedents (articles 44 to 47, inclusive), subject, however, to the two following exceptions, namely: (1) That the right is limited to transfers to corporations and associations created or organized in the United States, or to trustees for use within the United States, and (2) is then available only if the executor includes in the return the value at the time of the decedent's death of that part of the gross estate not situated in the United States.

Instead of duplicate copies of the documents specified in article 46, only one copy is required to be filed.

ART. 55. Determination of net estate.—The following example will show the manner of determining the net estate of a nonresident alien. The gross estate, wherever situated, amounts to \$1,000,000, of which \$200,000 represents the value of the property having its situs within the United States (the term "United States" including not only the several States, but also the Territories of Alaska and Hawaii, and the District of Columbia). The funeral expenses, administration expenses, and claims against the estate aggregate \$150,000, and there are charitable bequests, for use within the United States, amounting to \$25,000. Hence the property situated within the United States constitutes 20 per cent of the entire gross estate wherever situated, and a like percentage of the \$150,000 is \$30,000. The following result is accordingly obtained:

Gross estate within the United States.....	\$200, 000
20 per cent of \$150,000.....	\$30, 000
Charitable bequests for use within the United States.....	25, 000
	<hr/> 55, 000
Net estate	145, 000

For the manner of computing the tax on the net estate, see article 8.

In the example given, had the decedent died prior to the effective date of the Revenue Act of 1928, 20 per cent of the funeral expenses, administration expenses, and claims against the estate, or \$30,000, would not have been deductible, for the reason that it would have exceeded 10 per cent of the value of the property situated in the United States. The deduction in such case would have been limited to 10 per cent of \$200,000, plus the charitable bequests, or a total of \$45,000, and the resultant net estate would have been \$155,000, instead of the amount given in the example.

ART. 56. Payment of tax.—The provisions relating to credits (see article 9) and to rates and payment of the tax are the same in estates of nonresident aliens (or of nonresidents, regardless of citizenship, if the decedents died prior to the enactment of the Revenue Act of 1934) and of residents or citizens (or of residents only, without regard to citizenship, if the decedents died prior to the enactment of the Revenue Act of 1934). The statute provides that the executor shall pay the tax. If there is no executor or administrator appointed, qualified, and acting within the United States, every person in either the actual or constructive possession of any property of the decedent is constituted by the statute an executor for the purpose of tax payment, and is liable for the tax to the extent of the property so in his possession. (See articles 78 to 85, inclusive.) All checks, drafts, or money orders should be made payable to the order of Collector of Internal Revenue.

PRELIMINARY NOTICE—ESTATES OF RESIDENTS OR CITIZENS

SEC. 304. (a) The executor, within two months after the decedent's death, or within a like period after qualifying as such, shall give written notice thereof to the collector. * * *

SEC. 403. Revenue Act of 1932.

Except as provided in section 402, the tax imposed by section 401 of this Act shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by section 301 (a) of the Revenue Act of 1926, except that in the case of a resident decedent a return shall be required if the value of the gross estate at the time of the decedent's death exceeds \$50,000.

ART. 57. When notice required.—A preliminary notice is required to be filed in the case of every resident or citizen (or of a resident only, without regard to citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934) whose gross estate exceeded \$50,000 in value at the date of death, except that if the decedent died

subsequent to the effective date of the Revenue Act of 1926 (10.25 a. m., eastern standard time, February 26, 1926) and prior to the effective date of the Revenue Act of 1932 (5 p. m., eastern standard time, June 6, 1932), notice is required if the gross estate exceeded \$100,000 in value at the date of death. The notice must be filed in duplicate within two months after the decedent's death or within two months after the executor has qualified. In the case of a resident, it must be filed with the collector in whose district the decedent had his domicile at the time of death. In the case of a nonresident citizen, it must be filed with the collector in whose district the gross estate in the United States was situated; or, if the gross estate in the United States was situated in more than one district, or, if no part of the gross estate was situated in the United States, it must be filed with the collector for the second district of New York, or with such collector as the Commissioner may designate. If there is doubt as to whether the gross estate exceeded \$50,000, or exceeded \$100,000, as the case may be, the notice should be filed as a matter of precaution in order to avoid the possibility of penalties attaching.

ART. 58. Notice by executor or administrator.—The duly qualified executor or administrator is required to file such preliminary notice on Form 704, copies of which may be obtained from the collector, within two months after qualifying as such, if notice has not already been filed. The primary purpose of the notice is to advise the Government of the existence of taxable estates, and filing should not be delayed beyond the two months' period because of uncertainty as to the exact value of the assets. Since the filing of the notice within the prescribed period is mandatory, the estimate of the gross estate called for by the notice is merely the best approximation of value which can be made within the time allowed. The instructions upon the back of the form should be read carefully before executing the notice. The signature of one executor or administrator upon Form 704 is sufficient. For penalties for delinquency in filing notice, or for filing a false or fraudulent notice, see articles 91, 92, and 94.

ART. 59. Notice by others than duly qualified executor or administrator.—The term "executor" embraces any person in actual or constructive possession of any property of the decedent at the time of the latter's death, if within two months after the decedent's death no executor or administrator qualifies. The notice on Form 704 must be filed by such persons in every case in which an executor or administrator has not duly qualified within such period. If, within the period mentioned, an executor or administrator qualifies, the duty of filing the notice devolves upon him, and all other persons are relieved therefrom.

PRELIMINARY NOTICE—ESTATES OF NONRESIDENT ALIENS

ART. 60. Estates of nonresident aliens; preliminary notice.—In estates of nonresident aliens (or of nonresidents, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934), notice on Form 705, copies of which may be obtained from the Commissioner of Internal Revenue, Washington, D. C., or from any United States collector of internal revenue, upon application, is required if any part of the gross estate was situated (within the meaning of the statute, as to which see article 50) in the United States. The notice must be filed, in duplicate, by every appointed, qualified, and acting executor or administrator within the United States with the United States collector of internal revenue of the district in which such part of the gross estate was situated, or, if such part of the gross estate was situated in more than one district, it must be filed with the collector for the second district of New York, or with such collector as the Commissioner may designate. The notice is necessary if any part of the decedent's gross estate was situated, within the meaning of the statute, in the United States, regardless of the value of that part or of the entire gross estate. If no executor or administrator has qualified, notice must be filed within two months after the date of death by every person in either the actual or constructive possession of any property of the decedent so within the United States at the time of his death. If such person has no knowledge of the decedent's death within two months following its occurrence, he should file the notice immediately upon obtaining such knowledge. The term "person in actual or constructive possession of any property of the decedent" (section 300) includes, among others, the decedent's agents and representatives; safe-deposit companies, warehouse companies, and similar custodians of property in this country; brokers holding, as collateral, securities belonging to the decedent or investment funds owned by the decedent, and debtors of the decedent in this country. As to any moneys deposited by or for a decedent of this class with any person, corporation, or association carrying on the banking business, no notice is required, unless, however, the decedent was engaged in business in the United States at the time of his death.

ART. 61. Information return by corporation or transfer agent.—Upon notification from the Bureau of Internal Revenue a corporation (organized or created in the United States), or its transfer agent will be required to file a return disclosing the following information pertaining to stocks or bonds registered in the name of a nonresident decedent (regardless of citizenship): (1) Name of decedent as registered; (2) date of death, residence, place of death, and names and addresses of executors, attorneys, or other representatives, within

and without the United States, if known; and (3) a description of the securities and the number of shares or bonds and the par values. Treasury Department Form 714, which will be supplied by the Bureau upon request, may be used for the return.

ART. 62. Transfer certificates.—Certificates permitting the transfer of property of nonresident decedents (regardless of citizenship) without liability will be issued by the Commissioner when he is satisfied that the tax imposed upon the estate, if any, has been fully discharged or provided for. The tax will be considered fully discharged for the purpose of the issuance of a transfer certificate only when investigation has been completed and payment of the tax, including any deficiency finally determined, has been made. If the tax liability has not been fully discharged transfer certificates may be issued permitting the transfer of particular items of property without liability upon the filing with the Commissioner of such security as he may require. No corporation or its transfer agent should transfer stock or bonds registered in the name of a nonresident decedent without first requiring this transfer certificate covering all of the decedent's stock and bonds of the corporation and showing that such transfer may be made without liability. A bank, trust company, or other custodian in possession of bills, notes, cash, mortgages, securities, money due on open accounts by domestic debtors, or any other property situated in the United States of a nonresident decedent's estate should also require the certificate before transferring such property. Corporations, transfer agents, banks, trust companies, or other custodians can insure avoidance of liability for tax and penalties only by demanding and receiving transfer certificates prior to transfer of property of nonresident decedents (regardless of citizenship).

The requirements of this and the preceding article do not apply if there is an executor or administrator appointed, qualified, and acting within the United States.

THE RETURN—ESTATES OF RESIDENTS OR CITIZENS

SEC. 304. (a) * * * The executor shall also, at such times and in such manner as may be required by regulations made pursuant to law, file with the collector a return under oath in duplicate, setting forth (1) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident, of that part of his gross estate situated in the United States; (2) the deductions allowed under section 303; (3) the value of the net estate of the decedent as defined in section 303; and (4) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

(b) Return shall be made in all cases where the gross estate at the death of the decedent exceeds \$100,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate.

SEC. 403. Revenue Act of 1932.

Except as provided in section 402, the tax imposed by section 401 of this Act shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by section 301 (a) of the Revenue Act of 1926, except that in the case of a resident decedent a return shall be required if the value of the gross estate at the time of the decedent's death exceeds \$50,000.

SEC. 403. Revenue Act of 1934. * * *

(e) Section 304(a) and (b) of such Act, as amended, are amended by striking out "nonresident" wherever such word appears and inserting in lieu thereof in each case "nonresident not a citizen of the United States"

(f) Section 403 of the Revenue Act of 1932 is amended by striking out "resident decedent" and inserting in lieu thereof "citizen or resident of the United States".

ART. 63. When return required—Date of filing.—A return on Form 706 is required in the case of every resident or citizen (or resident, without regard to citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934), whose gross estate, as defined in the statute, exceeded \$50,000 in value at the date of death, except that if the decedent died subsequent to the effective date of the Revenue Act of 1926 (10.25 a. m., eastern standard time, February 26, 1926) and prior to the effective date of the Revenue Act of 1932 (5 p. m., eastern standard time, June 6, 1932), the return is required if the gross estate exceeded \$100,000 in value at the date of death. In the case of a resident, the return must be filed with the collector in whose district the decedent had his domicile at the time of death. In the case of a nonresident citizen, it must be filed with the collector in whose district the gross estate in the United States was situated; or, if the gross estate in the United States was situated in more than one district, or, if no part of the gross estate was situated in the United States, it must be filed with the collector for the second district of New York, or with such collector as the Commissioner may designate. It must be filed in duplicate within one year after the date of death, or, in any particular instance, at such time prior to the expiration of such year as the Commissioner may designate. If the due date for filing

the return falls on a Sunday or on a legal holiday, the due date for filing will be the day following such Sunday or legal holiday. If placed in the mails the return should be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the date on which the return is required to be filed. If a return is made and placed in the mails in due course, properly addressed, and postage paid, in ample time to reach the office of the collector on or before the due date, no penalty will attach should the return not be actually received by such officer until subsequent to that date.

ART. 64. Persons liable for return.—The statute provides that the duly qualified executor or administrator shall file the return. If there is more than one executor or administrator, the return must be made jointly by all. If no executor or administrator has been appointed, every person in actual or constructive possession of any property of the decedent is constituted by the statute an executor for the purposes of the tax (section 300), and is required to make and file a return as provided by section 304. If, in any case, the executor is unable to make a complete return as to any part of the gross estate, he is required to give all the information he has as to such property, including a full description, and the name of every person holding a legal or beneficial interest in the property. If the executor is unable to make a return as to any property, the statute requires that every person holding a legal or beneficial interest therein shall, upon notice from the collector, make return as to such part of the gross estate. For penalties for delinquency in filing return, or for filing a false or fraudulent return, see articles 91, 92, and 94.

ART. 65. Preparation of return.—The return must be made on Form 706, copies of which will be supplied by the collector upon application. It must be filed in duplicate under oath and contain an itemized inventory by schedule of the property constituting the gross estate and lists of the deductions under the appropriate schedules. The return must set forth (1) the value of the gross estate (see articles 10–28), (2) the deductions allowed (see articles 29–48), (3) the value of the net estate, and (4) the tax paid or payable thereon. If the decedent died subsequent to the effective date of the Revenue Act of 1932 (5 p. m., eastern standard time, June 6, 1932), the return must set forth both the net estate determined in accordance with the provisions of the Revenue Act of 1926 and the net estate for the purposes of the additional tax imposed by the Revenue Act of 1932, which should be determined in the same manner except that in lieu of the exemption of \$100,000 provided in section 303 (a)

(4) of the Revenue Act of 1926, the exemption is \$50,000 (see article 48), and both the tax imposed by the Revenue Act of 1926 and the additional tax imposed by the Revenue Act of 1932. The tax payable upon a return filed for an estate subject to both the tax imposed by the Revenue Act of 1926 and the additional tax imposed by the Revenue Act of 1932 is the total of said taxes. The instructions printed on the form should be carefully followed. All documents and vouchers used in preparing the return should be retained by the executor so as to be available for inspection whenever required. Duplicate copies of the will, if the decedent died testate, one of which should be certified, must be submitted with the return, together with copies of such other documents as in Form 706 and in the applicable articles of these regulations are required. There may also be filed in duplicate copies of any documents which the executor may desire to submit with the return in explanation thereof.

In every case of an estate of a nonresident citizen who died after the date of the enactment of the Revenue Act of 1934, the executor should file the following documents with the return: (1) A copy of the inventory of property and the schedule of liabilities, claims against the estate and expenses of administration filed with the foreign court of probate jurisdiction, certified by a proper official of such court. (2) A copy of the return filed under the foreign inheritance, estate, legacy, or succession tax act, certified by a proper official of the foreign tax department, if the estate is subject to such a foreign tax.

ART. 66. Supplemental data.—The statute provides that the executor, in addition to filing notice and return, shall furnish such supplemental data as may be necessary to establish the correct tax (section 304). It is therefore the duty of the executor to furnish upon request copies of any documents in his possession relating to the estate, or on file in any court having jurisdiction over the estate, appraisal lists of any items included in the gross estate, copies of balance sheets or other financial statements relating to the value of stock, and any other information obtainable by him that may be found necessary in the determination of the tax. Failure to comply with such a request will render the executor liable to penalties (article 93), and proceedings may be instituted in the proper United States court to secure compliance therewith (section 1122 (a)).

Persons having possession or control of any records or documents containing or supposed to contain any information concerning the estate, or having knowledge or information of any fact or facts of a material bearing upon the liability, or the extent of liability, of the

estate to the tax, shall, upon request of the Commissioner or any revenue agent or inspector designated by him for that purpose, make disclosure thereof. Failure on the part of any person to comply with such request will render him liable to penalties (article 93), and compliance with the request may be enforced in the proper United States court (section 1122 (a)).

DETERMINATION OF TAX BY COMMISSIONER

SEC. 306. As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax.

SEC. 313. * * * (b) If the executor makes written application to the Commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Commissioner (as soon as possible, and in any event within one year after the making of such application, or, if the application is made before the return is filed, then within one year after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in section 310) shall notify the executor of the amount of the tax. The executor, upon payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

ART. 67. **Examination of return and determination of tax by the Commissioner.**—As soon as practicable after returns are filed, they will be examined and the amount of the tax determined by the Commissioner under the procedure specifically prescribed in this article and under such further procedure as may be prescribed from time to time by the Commissioner. (See article 77.)

If it is practicable to do so, the Bureau will, in its discretion, or upon the executor's request to the Commissioner, make its field investigation simultaneously and in cooperation with the officials having in charge the matter of determining the amount of tax due the State or Territory by virtue of the decedent's death. Such investigation will extend to all questions in so far as they have bearing both upon the tax liability of the estate under the Federal estate tax law and the taxing act of the particular State or Territory, and comprehend the disclosure to the agents of the State or Territory of information contained in the return as well as that obtained upon investigation, provided a like cooperation is given by the agency of the State or Territory. Such disclosure may be made by the field investigating officer or his superiors, either during the investigation or subsequent thereto. The investigations made in cooperation with the State or Territory are, like all others, limited to an ascertainment of information to aid the Commissioner, who alone under the

law is empowered to determine the tax, in arriving at a conclusion as to the Federal estate tax liability of the estate.

If the executor makes written application to the Commissioner for a determination of the tax and discharge from personal liability therefor, the Commissioner will within one year after receipt of such application, or if application is made before the return is filed, then within one year after the return is filed, notify the executor of the amount of the tax, and upon payment thereof, the executor will be discharged from personal liability for any deficiency in the tax thereafter found to be due. (See section 313 (b) and (c).)

EXTENSION OF TIME FOR FILING RETURN

Revised Statutes, section 3176 (as amended by section 1103, Revenue Act of 1926, and section 619 (d), Revenue Act of 1928 [U. S. C., Sup. VII, title 26, section 1524]).

* * * If the failure to file a return (other than a return of income tax) or a list is due to sickness or absence, the collector may allow such further time, not exceeding 30 days, for making and filing the return or list as he deems proper. * * *

ART. 68. Extension of time by collector.—In case of sickness or absence, collectors are authorized to grant an extension of time for filing the return for a period not in excess of 30 days from the due date, which extension may be granted either before or after the due date. An extension of time for filing the return does not in itself operate to extend the time for the payment of the tax, which is due and payable one year after the date of the decedent's death. For extension of time of payment, see article 82.

ART. 69. Extension of time by Commissioner.—If it is impossible for the executor to file a reasonably complete return within one year from the date of death, the Commissioner may, upon application from the executor showing good and sufficient cause, grant an extension of time not to exceed six months from the due date. Before the expiration of the extension period granted a return as complete as possible must be filed. The return thus filed will be the return required by section 304 (a) and any tax shown thereon will be the "amount determined by the executor as the tax" referred to in section 305 (b) and section 307. Such return can not thereafter be amended although supplemental information may subsequently be filed that may result in a finally determined tax different from the amount shown as the tax by the executor upon his return. An extension of time for filing the return does not operate to extend the time for the payment of the tax, which is due one year after the decedent's death. An extension of time in which to make payment of the tax may be secured as provided in article 82.

THE RETURN—ESTATES OF NONRESIDENT ALIENS

ART. 70. Return of estates of nonresidents.—A return on Form 706, copies of which may be obtained from the Commissioner of Internal Revenue, Washington, D. C., or from any United States collector of internal revenue, upon application, is required in the case of every nonresident alien (or nonresident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934) any part of whose gross estate was situated (within the meaning of the statute, as to which see article 50) in the United States. The return must set forth an itemized list of that part of the gross estate situated in the United States and the total value thereof (see article 51), the deductions claimed, if any (see articles 52-54), the value of the net estate (see article 55), and the tax paid or payable thereon. If the decedent died subsequent to the effective date of the Revenue Act of 1932 (5 p. m., eastern standard time, June 6, 1932) and the value of the net estate exceeds \$10,000, the return must set forth both the tax imposed by the Revenue Act of 1926 and the additional tax imposed by the Revenue Act of 1932. The return must be filed with the United States collector of internal revenue of the district in which such part of the gross estate was situated, or, if such part of the gross estate was situated in more than one district, it must be filed with the collector for the second district of New York, or with such collector as the Commissioner may designate. The return must be filed in duplicate and under oath within one year after the decedent's death, or, in any particular instance, at such time prior to the expiration of such year as the Commissioner may designate, unless an extension is obtained pursuant to article 68 or 69. If the due date for filing the return falls on a Sunday or on a legal holiday, the due date for filing will be the day following such Sunday or legal holiday. If placed in the mails the return should be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the date on which the return is required to be filed. If a return is made and placed in the mails in due course, properly addressed, and postage paid, in ample time to reach the office of the collector on or before the due date, no penalty will attach should the return not be actually received by such officer until subsequent to that date. The return should be made and filed by the executor or administrator appointed, qualified, and acting within the United States, or, if none, then by any person in actual or constructive possession of any property of the decedent situated (within the meaning of the statute) in the United States, whatever its value. If the qualified executor or administrator is unable to make a complete return as

to any part of the gross estate, he is required to give all the information available to him as to such part, including a description thereof and the name of every person holding a legal or beneficial interest therein. As to the meaning of the term "person in actual or constructive possession of any property of the decedent," see article 60.

ART. 71. Supplemental data.—Pursuant to the provisions of section 304 (a), with respect to furnishing supplemental data, if the decedent is a nonresident alien (or a nonresident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934), the executor is required to file with the return:

(1) A certified copy of will, if decedent died testate, or, if the decedent left several wills to govern in different jurisdictions, certified copy of each will.

(2) If any deductions are claimed, copy of inventory of property filed under the foreign death-duty act; or, if no such inventory was filed, a certified copy of inventory filed with the foreign court of probate jurisdiction.

The Commissioner may require the documents specified in paragraph (2) regardless of whether deductions are claimed. For requirements dealing with the duty to furnish other documents or information relating to the tax liability of the estate, and penalties in connection therewith, see article 66.

PRIVILEGED CHARACTER OF RETURNS

ART. 72. Returns confidential.—All estate tax returns and notices are treated as privileged communications and may not be exhibited other than to the executor or his duly authorized agent, except as stated in articles 67 and 73. This requirement will be rigidly enforced, and extends to information of a private nature submitted or obtained in connection with a return or notice. The requirement does not operate to prevent internal revenue officers from disclosing the returned value of any item or the amount of any specific deduction, if such disclosure is necessary in order to arrive at a correct determination of the tax. This right of disclosure, however, does not extend to such information as the amount of the estate, the amount of tax, or other general data. Nor are the records in possession of the Bureau, whether on file with the Commissioner or the collector, open to inspection, except as provided in articles 67 and 73. If a copy of the return is desired because no copy was retained by the executor or the retained copy has been lost or destroyed, or for other satisfactory reasons, such copy may be furnished by the Commissioner to the executor, or his authorized attorney, upon payment of the fee prescribed.

ART. 73. Disclosure other than to executor.—If any person other than the executor has a material interest in ascertaining any fact disclosed by the return, or in obtaining information as to the payment of the tax, or if an officer of a State or Territory requires information contained in a return or obtained upon investigation for his official use in connection with an estate, inheritance, legacy, or succession tax of the State or Territory, he shall make a written application to the Commissioner of Internal Revenue for such information, setting forth the nature of his interest and the purpose of the application. The Commissioner will review the application, and, if it is approved, the collector will be directed to exhibit the return to the applicant, or give him such information as is specified, or the Commissioner may permit an inspection of or furnish a copy of the return on file in the Bureau, or may furnish such information as he deems advisable.

Under no circumstances shall the collector give information to persons other than the executor except upon the written order of the Commissioner, and then only to the extent authorized by such order.

If an attorney or other person asks a ruling on a question of law arising in a specific case, the Commissioner will require satisfactory evidence of the right to obtain such ruling. Hypothetical questions, however, can not be answered.

ART. 74. Attorneys must have authorization.—In all cases in which information is sought regarding an estate, or an interview is asked, by an attorney or by any agent of the executor or administrator, the information or interview will be denied unless the attorney or agent presents a duly executed power of attorney from the executor or administrator authorizing the attorney or agent to act in his behalf.

No attorney or agent will be recognized as representing an estate or executor unless such attorney or agent is enrolled to represent claimants or others before the Treasury Department. For regulations governing enrollment, reference should be made to Treasury Department Circular No. 230, as revised, copies of which may be obtained upon application to the Secretary of the Committee on Enrollment and Disbarment, Treasury Department, Washington, D. C.

RETURN BY COLLECTOR OR COMMISSIONER

Revised Statutes, section 3176 (as amended by section 1103, Revenue Act of 1926 [U. S. C., Sup. VII, title 26, section 1512 (a)-(c)]).

If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make

the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner of Internal Revenue may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be *prima facie* good and sufficient for all legal purposes. * * *

ART. 75. No return filed, or a false or fraudulent return filed.—Section 3176 of the Revised Statutes (U. S. C., Sup. VII, title 26, section 1512 (a)–(c)) provides that if any person fails to make and file a return at the time required, or makes, willfully or otherwise, a false or fraudulent return, the collector or deputy collector shall make a return. The Commissioner may also make a return or amend any return made by a collector or deputy collector. A return so made by the Commissioner, or made by the collector or deputy collector and approved by the Commissioner, shall be *prima facie* good and sufficient for all legal purposes. If a tax is found to be due upon such a return, both the estate and the executor will be liable for penalties as well as for the tax.

DEFICIENCY TAX

SEC. 307. As used in this title in respect of a tax imposed by this title the term “deficiency” means—

(1) The amount by which the tax imposed by this title exceeds the amount shown as the tax by the executor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the executor upon his return, or if no return is made by the executor, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax.

SEC. 308. (a) (As amended by section 501, Revenue Act of 1934.) If the Commissioner determines that there is a deficiency in respect of the tax imposed by this title, the Commissioner is authorized to send notice of such deficiency to the executor by registered mail. Within 90 days after such notice is mailed (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day), the executor may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. Except as otherwise provided in subdivision (d) or (f) of this section or in section 312 or 1001, no assessment of a deficiency in respect of the tax imposed by this title and no distraint or proceeding in court for its collection shall be

made, begun, or prosecuted until such notice has been mailed to the executor, nor until the expiration of such 90-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3224 of the Revised Statutes the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

* * * * *

(e) The Board shall have jurisdiction to redetermine the correct amount of the deficiency, even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the executor, and to determine whether any additional amount or addition to the tax should be assessed, if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) If after the enactment of this Act the Commissioner has mailed to the executor notice of a deficiency as provided in subdivision (a), and the executor files a petition with the Board within the time prescribed in such subdivision, the Commissioner shall have no right to determine any additional deficiency, except in the case of fraud, and except as provided in subdivision (e) of this section or in subdivision (c) of section 312. If the executor is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered for the purposes of this subdivision or of subdivision (a) of this section, or of section 319, as a notice of a deficiency, and the executor shall have no right to file a petition with the Board of Tax Appeals based on such notice, nor shall such assessment or collection be prohibited by the provisions of subdivision (a) of this section.

SEC. 318. (a) If after the enactment of this Act the Commissioner determines that any assessment should be made in respect of any estate or gift tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or by any such Act as amended, the Commissioner is authorized to send by registered mail to the person liable for such tax notice of the amount proposed to be assessed, which notice shall, for the purposes of this Act, be considered a notice under subdivision (a) of section 308 of this Act. In the case of any such determination the amount which should be assessed (whether as deficiency or additional tax or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in case of delinquency in payment after notice and demand and the provisions prohibiting claims and suits for refund) as in the case of a deficiency in the tax imposed by this title, except that in the case of an estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, the period of limitation prescribed in section 1109 of this

Act shall be applied in lieu of the period prescribed in subdivision (a) of section 310.

(b) If before the enactment of this Act any person has appealed to the Board of Tax Appeals under subdivision (a) of section 308 of the Revenue Act of 1924 (if such appeal relates to a tax imposed by Title III of such Act or to so much of an estate tax imposed by any of the prior Acts enumerated in subdivision (a) of this section as was not assessed before June 3, 1924), and the appeal is pending before the Board at the time of the enactment of this Act, the Board shall have jurisdiction of the appeal. In all such cases the powers, duties, rights, and privileges of the Commissioner and of the person who has brought the appeal, and the jurisdiction of the Board and of the courts, shall be determined, and the computation of the tax shall be made, in the same manner as provided in subdivision (a) of this section, except as provided in subdivision (h) of this section and except that the person liable for the tax shall not be subject to the provisions of subdivision (a) of section 319.

(c) If before the enactment of this Act the Commissioner has mailed to any person a notice under subdivision (a) of section 308 of the Revenue Act of 1924 (whether in respect of a tax imposed by Title III of such Act or in respect of so much of an estate tax imposed by any of the prior Acts enumerated in subdivision (a) of this section as was not assessed before June 3, 1924), and if the 60-day period referred to in such subdivision has not expired before the enactment of this Act and no appeal has been filed before the enactment of this Act, such person may file a petition with the Board in the same manner as if a notice of deficiency had been mailed after the enactment of this Act in respect of a deficiency in a tax imposed by this title. In such cases the 60-day period referred to in subdivision (a) of section 308 of this Act shall begin on the date of the enactment of this Act, and the powers, duties, rights, and privileges of the Commissioner and of the person entitled to file the petition, and the jurisdiction of the Board and of the courts, shall, whether or not the petition is filed, be determined, and the computation of the tax shall be made, in the same manner as provided in subdivision (a) of this section.

(d) If any deficiency in any estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, was assessed before June 3, 1924, but was not paid in full before the date of the enactment of this Act, and if the Commissioner, after the enactment of this Act, finally determines the amount of the deficiency, he is authorized to send by registered mail to the person liable for such tax notice of such deficiency, which notice shall, for the purposes of this Act, be considered a notice under subdivision (a) of section 308 of this Act. In the case of any such final determination the amount of the tax (whether as deficiency or additional tax or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in cases of delinquency in payment after notice and demand, and the provisions relating to claims and suits for refunds) as in the case of a deficiency in the tax

imposed by this title, except as otherwise provided in subdivision (g) of this section, and except that the period of limitation prescribed in section 1109 of this Act shall be applied in lieu of the period prescribed in subdivision (a) of section 310.

(e) If any deficiency in any estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, was assessed before June 3, 1924, but was not paid in full before that date, and if the Commissioner after June 2, 1924, but before the enactment of this Act, finally determined the amount of the deficiency, and if the person liable for such tax appealed before the enactment of this Act to the Board of Tax Appeals and the appeal is pending before the Board at the time of the enactment of this Act, the Board shall have jurisdiction of the appeal. In all such cases the powers, duties, rights, and privileges of the Commissioner and of the person who has brought the appeal, and the jurisdiction of the Board and of the courts, shall be determined, and the computation of the tax shall be made, in the same manner as provided in subdivision (d) of this section, except as provided in subdivision (h) of this section and except that the person liable for the tax shall not be subject to the provisions of subdivision (a) of section 319.

(f) If any deficiency in any estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, was assessed before June 3, 1924, but was not paid in full before the date of the enactment of this Act, and if the Commissioner after June 2, 1924, finally determined the amount of the deficiency, and notified the person liable for such tax to that effect less than 60 days prior to the enactment of this Act and no appeal has been filed before the enactment of this Act, the person so notified may file a petition with the Board in the same manner as if a notice of deficiency had been mailed after the enactment of this Act in respect of a deficiency in a tax imposed by this title. In such cases the 60-day period referred to in subdivision (a) of section 308 of this Act shall begin on the date of the enactment of this Act, and, whether or not the petition is filed, the powers, duties, rights, and privileges of the Commissioner and of the person who is so notified, and the jurisdiction of the Board and of the courts, shall be determined, and the computation of the tax be made, in the same manner as provided in subdivision (d) of this section.

(g) In cases within the scope of subdivision (d), (e), or (f), if the Commissioner believes that the collection of the deficiency will be jeopardized by delay, he may, despite the provisions of subdivision (a) of section 308 of this Act, instruct the collector to proceed to enforce the payment of the unpaid portion of the deficiency, and notice and demand shall be made by the collector for the payment thereof. Within 30 days after such jeopardy notice and demand the person liable for the tax may obtain a stay of collection of the whole or any part of the amount included in the notice and demand by filing with the collector a bond in like manner, under the same conditions, and with the same effect, as in the case of a bond to stay the collection of a jeopardy assessment under section 312 of this Act.

(h) In cases within the scope of subdivision (b) or (e) of this section where any hearing before the Board has been held before the

enactment of this Act and the decision is rendered after the enactment of this Act, such decision shall, for the purposes of this title, be considered to have become final upon the date when it is rendered, and neither party shall have any right to petition for a review of the decision. The Commissioner may, within one year from the time the decision is rendered, begin a proceeding in court for the collection of any part of the amount disallowed by the Board, unless the statutory period of limitations properly applicable thereto has expired before the appeal was taken to the Board. The court shall include in its judgment interest upon the amount thereof in the same cases, at the same rate, and for the same period, as if such amount were collected otherwise than by proceeding in court. In any such proceeding by the Commissioner or in any suit by the taxpayer for a refund, the findings of the Board shall be prima facie evidence of the facts therein stated.

(i) Where before the enactment of this Act a jeopardy assessment has been made under subdivision (d) of section 308 of the Revenue Act of 1924 (whether of a deficiency in the tax imposed by Title III of such Act or of a deficiency in an estate tax imposed by any of the prior Acts enumerated in subdivision (a) of this section) all proceedings after the enactment of this Act shall be the same as under the Revenue Act of 1924 as amended by this Act, except that—

(1) A decision of the Board rendered after the enactment of this Act where no hearing has been held by the Board before the enactment of this Act may be reviewed in the same manner as provided in this Act in the case of a tax imposed by this title;

(2) Where no hearing has been held by the Board before the enactment of this Act, the Commissioner shall have no right to begin a proceeding in court for the collection of any part of the deficiency disallowed by the Board; and

(3) In the consideration of the case the jurisdiction and powers of the Board shall be the same as provided in this Act in the case of a tax imposed by this title.

(j) In the case of any estate or gift tax imposed by prior Act of Congress, in computing the period of limitations provided in section 310 or 311 of this Act on the making of assessments and the beginning of distraint or a proceeding in court, the running of the statute of limitations shall be considered to have been suspended (in addition to the period of suspension provided for in subdivision (b) of section 310) for any period of time prior to the enactment of this Act during which the Commissioner was prohibited from making the assessment or beginning distraint or proceeding in court.

SEC. 606. Revenue Act of 1928.

(a) **Authorization.**—The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commissioner) is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal-revenue tax for any taxable period ending prior to the date of the agreement.

(b) **Finality of agreement.**—If such agreement is approved by the Secretary, or the Undersecretary, within such time as may be stated

in such agreement, or later agreed to, such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

(c) Section 1106(b) of the Revenue Act of 1926 is repealed, effective on the expiration of 30 days after the enactment of this Act, but such repeal shall not affect any agreement made before such repeal takes effect.

ART. 76. Deficiency, petitions, and closing agreements.—Section 307 by its definition of the word “deficiency” provides a term which will apply to any amount of tax determined to be due in excess of the amount of tax reported by the executor, or in excess of the amount reported by the executor as adjusted by way of prior assessments, abatements, refunds, or collections without assessment. In defining the term “deficiency” section 307 recognizes two classes of cases—one, in which the executor makes a return showing some tax liability; the other, in which the executor makes a return showing no tax liability, or in which the executor fails to make a return. Additional tax, resulting from supplemental information filed after the return has been filed, is a deficiency within the meaning of the Act.

When a case is considered for the first time, the deficiency is the excess of the amount determined to be the correct amount of the tax over the amount shown as the tax by the executor on his return, or, if it is a case in which no tax was reported by the executor, the deficiency is the amount determined to be the correct amount of the tax. Subsequent information sometimes discloses that the amount previously determined to be the correct amount of the tax is less than the correct amount, and that a redetermination of the tax is necessary. In such a case the deficiency on redetermination is the excess of the amount determined to be the correct amount of the tax over the sum of the amount of tax reported by the executor and the deficiency assessed in connection with the previous determination. If it is a case in which no tax was reported by the executor, the deficiency is the excess of the amount determined to be the correct amount of the tax over the amount of the deficiency disclosed by the previous determination. If the previous determination resulted in a refund to the executor, the deficiency upon the second determination is the excess of the amount determined to be the correct amount of the tax over the amount of tax reported by the executor decreased by the amount of the refund.

In all cases in which a deficiency in respect of a tax (including penalties or other additions to the tax provided by law) is determined by the Commissioner, a notice thereof will be sent to the executor by registered mail in accordance with the provisions of section 308 (a) of the statute even though a jeopardy assessment (see article 77) is made. If, subsequent to the mailing of such notice, a jeopardy assessment is made in respect of the deficiency to which such notice relates no subsequent notice will be sent to the executor by the Commissioner, but if such jeopardy assessment is made, and the amount thereof is in excess of the deficiency to which the notice relates, the Commissioner will mail a notice to the executor as required by section 308 (a) of the determination of such additional deficiency provided no petition has theretofore been filed with the Board of Tax Appeals. If a deficiency is determined in respect of both the tax imposed by the Revenue Act of 1926 and the additional tax imposed by the Revenue Act of 1932, notice of both deficiencies may be incorporated in the same communication.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) after the mailing of the registered letter notifying him of the final determination of a deficiency by the Commissioner, the executor may file a petition with the Board of Tax Appeals for a redetermination of the deficiency, other than a deficiency resulting from the correction of a mathematical error appearing upon the return. If notice of the deficiency is mailed prior to, or within 30 days after, the enactment of the Revenue Act of 1934, the period within which a petition may be filed with the Board is 60 days (not counting Sunday as the sixtieth day) after mailing of the notice. (See article 77.) The right to file a petition with the Board exists whether the decedent died prior or subsequent to the enactment of the Revenue Act of 1926.

The executor and the Commissioner (or any officer or employee authorized by the Commissioner), subject to approval by the Secretary or the Under Secretary of the Treasury, may, under the provisions of section 606 of the Revenue Act of 1928, enter into a closing agreement in writing relating to the tax liability of the estate which will be final and conclusive except upon a showing of fraud or malfeasance, or misrepresentation of a material fact.

ASSESSMENT OF TAX

SEC. 308. * * * (b) If the executor files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed

as such by the decision of the Board, which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

(c) If the executor does not file a petition with the Board within the time prescribed in subdivision (a) of this section, the deficiency, notice of which has been mailed to the executor, shall be assessed, and shall be paid upon notice and demand from the collector.

(d) The executor shall at any time have the right, by a signed notice in writing filed with the Commissioner, to waive the restrictions provided in subdivision (a) of this section on the assessment and collection of the whole or any part of the deficiency.

(e) The Board shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the executor, and to determine whether any additional amount or addition to the tax should be assessed, if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) If after the enactment of this Act the Commissioner has mailed to the executor notice of a deficiency as provided in subdivision (a), and the executor files a petition with the Board within the time prescribed in such subdivision, the Commissioner shall have no right to determine any additional deficiency, except in the case of fraud, and except as provided in subdivision (e) of this section or in subdivision (c) of section 312. If the executor is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered, for the purposes of this subdivision or of subdivision (a) of this section, or of section 319, as a notice of a deficiency, and the executor shall have no right to file a petition with the Board of Tax Appeals based on such notice, nor shall such assessment or collection be prohibited by the provisions of subdivision (a) of this section.

(g) For the purposes of this title the date on which a decision of the Board becomes final shall be determined according to the provisions of section 1005.

SEC. 310. (a) Except as provided in section 311, the amount of the estate taxes imposed by this title shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of three years after the return was filed.

(b) The running of the statute of limitations provided in this section or in section 311 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under subdivision (a) of section 308) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court, and for 60 days thereafter.

SEC. 311. (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(b) Where the assessment of any tax imposed by this title or of any estate or gift tax imposed by prior Act of Congress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the executor.

(c) This section shall not bar a distraint or proceeding in court begun before the enactment of the Revenue Act of 1924; nor shall it authorize the assessment of a tax or the collection thereof by distraint or by proceeding in court (1) if at the time of the enactment of this Act such assessment, distraint, or proceeding was barred by the statutory period of limitation properly applicable thereto, unless prior to the enactment of this Act the Commissioner and the executor agreed in writing thereto, or (2) contrary to the provisions of subdivision (a) of section 308 of this Act.

SEC. 312. (a) If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall immediately assess such deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) and notice and demand shall be made by the collector for the payment thereof.

(b) If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under subdivision (a) of section 308, then the Commissioner shall mail a notice under such subdivision within 60 days after the making of the assessment.

(c) The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the executor, despite the provisions of subdivision (f) of section 308 and whether or not the executor has theretofore filed a petition with the Board of Tax Appeals. The Commissioner shall notify the Board of the amount of such assessment, if the petition is filed with the Board before the making of the assessment or is subsequently filed, and the Board shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) If the jeopardy assessment is made after the decision of the Board is rendered such assessment may be made only in respect of the deficiency determined by the Board in its decision.

(e) A jeopardy assessment may not be made after the decision of the Board has become final or after the executor has filed a petition for review of the decision of the Board.

(f) When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated

by a decision of the Board which has become final, together with interest thereon as provided in subdivision (j) of this section.

(g) If the bond is given before the executor has filed his petition with the Board under subdivision (a) of section 308, the bond shall contain a further condition that if a petition is not filed within the period provided in such subdivision, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision.

* * * * *

(i) When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

SEC. 318. (a) If after the enactment of this Act the Commissioner determines that any assessment should be made in respect of any estate or gift tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or by any such Act as amended, the Commissioner is authorized to send by registered mail to the person liable for such tax notice of the amount proposed to be assessed, which notice shall, for the purposes of this Act, be considered a notice under subdivision (a) of section 308 of this Act. In the case of any such determination the amount which should be assessed (whether as deficiency or additional tax or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in case of delinquency in payment after notice and demand and the provisions prohibiting claims and suits for refund) as in the case of a deficiency in the tax imposed by this title, except that in the case of an estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, the period of limitation prescribed in section 1109 of this Act shall be applied in lieu of the period prescribed in subdivision (a) of section 310.

SEC. 1109 (as amended by section 619 (a), Revenue Act of 1928). (a) Except in the case of * * * estate, and gift taxes—

(1) Notwithstanding the provisions of section 3182 of the Revised Statutes or any other provision of law, all internal-revenue taxes shall (except as provided in paragraph (2) or (3) of this subdivision) be assessed within four years after such taxes became due, and no proceeding in court without assessment for the collection of such taxes

shall be begun after the expiration of five years after such taxes became due.

(2) In case of a false or fraudulent return with intent to evade tax, of a failure to file a return within the time required by law, or of a willful attempt in any manner to defeat or evade tax, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(3) Where the assessment of any tax imposed by this Act or by prior Act of Congress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (A) within six years after the assessment of the tax, or (B) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer.

(b) This section shall not bar a distraint or proceeding in court begun before the enactment of the Revenue Act of 1924; nor shall it authorize the assessment of a tax or the collection thereof by distraint or by proceeding in court if at the time of the enactment of this Act such assessment, distraint, or proceeding was barred by the statutory period of limitation properly applicable thereto, unless prior to the enactment of this Act the Commissioner and the taxpayer agreed in writing thereto.

SEC. 402. Revenue Act of 1928.

(a) Section 310 (b) of the Revenue Act of 1926 is amended to read as follows:

"(b) The running of the statute of limitations provided in this section or in section 311 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under subdivision (a) of section 308) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter."

(b) Subsection (a) of this section shall apply in all cases where the period of limitation has not expired prior to the enactment of this Act.

SEC. 403. Revenue Act of 1932.

Except as provided in section 402, the tax imposed by section 401 of this Act shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by section 301 (a) of the Revenue Act of 1926, except that in the case of a resident decedent a return shall be required if the value of the gross estate at the time of the decedent's death exceeds \$50,000.

SEC. 808. Revenue Act of 1932.

(a) Section 305 (b) of the Revenue Act of 1926 is amended to read as follows:

"(b) Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such

part not to exceed eight years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, and the running of the statute of limitations for assessment and collection, as provided in sections 310 (a) and 311 (b), shall be suspended for the period of any such extension. * * *

(b) Section 308 (i) of the Revenue Act of 1926 is amended to read as follows:

“(i) Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner, with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax), may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of four years. If an extension is granted, the Commissioner may require the executor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. In such case the running of the statute of limitations for assessment and collection, as provided in sections 310 (a) and 311 (b), shall be suspended for the period of any such extension, * * *.”

ART. 77. Assessments.—In any case in which the Commissioner believes that the assessment or collection of a deficiency tax will be jeopardized by delay, he will make an immediate assessment thereof whether the decedent died before or after the passage of the Revenue Act of 1926. In such case the assessment may be made before the mailing of the notice provided by section 308 (a), or at any time thereafter prior to the filing of a petition for a review by the court of a decision rendered by the Board. If the jeopardy assessment is made subsequent to a decision of the Board, then the assessment is limited to the amount of the deficiency determined by the Board. If the jeopardy assessment is made before any notice in respect of the deficiency to which the jeopardy assessment relates has been mailed under subdivision (a) of section 308, the Commissioner will mail a notice as provided by such subdivision within 60 days after the making of such jeopardy assessment.

If an amount of tax in excess of that shown upon the return is determined to be due as a result of the correction of a mathematical error appearing upon the face of the return, the executor will be duly notified and an assessment made of the tax which would have been the correct tax but for the mathematical error. The notice that the correct amount of the tax has been assessed will not be a notice of a deficiency within the meaning of subdivision (a) of section 308 or section 319 and the executor has no right to file a petition with the Board of Tax Appeals based upon such notice.

If a petition is filed with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final will be assessed, except such portion as may have been assessed as a jeopardy assessment. If no petition is filed with the Board within the time prescribed in section 308 (a), the deficiency, notice of which has been mailed to the executor, will be assessed. If the executor by a signed notice in writing filed with the Commissioner waives the restrictions on the assessment and collection of the whole or any part of a deficiency, assessment of such whole or part will be made immediately. (As to payment, see articles 78 to 85, inclusive.)

All assessments against executors (as to assessments against transferees and fiduciaries, see article 105), except in the case of a false or fraudulent return, or of a failure to file a return within the time required by law, must be made within three years after the return was filed (four years after the due date of the tax if the decedent died prior to the effective date of the Revenue Act of 1924). If notice of a deficiency is mailed in accordance with the provisions of subdivision (a) of section 308, then the period within which assessment thereof is required to be made is extended for the period during which the Commissioner is prohibited from making the assessment and for 60 days thereafter. If a proceeding in respect of the deficiency is placed on the docket of the Board, the period within which assessment is required to be made is extended until the decision of the Board becomes final and for 60 days thereafter. If an extension of time for payment of the tax is granted in accordance with section 305 (b) or section 308 (i) as amended by section 808 of the Revenue Act of 1932, the period within which assessment is required to be made is extended by the time covered by such extension.

In case of a false or fraudulent return with intent to evade the tax, or of a failure to file a required return, the tax may be assessed, or proceedings in court for collection may be begun without assessment, at any time.

PAYMENT OF AND RECEIPTS FOR TAXES

SEC. 305. (a) The tax imposed by this title shall be due and payable one year after the decedent's death, and shall be paid by the executor to the collector. * * *

SEC. 308. * * * (b) If the executor files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. * * *

(c) If the executor does not file a petition with the Board within the time prescribed in subdivision (a) of this section, the deficiency, notice of which has been mailed to the executor, shall be assessed, and shall be paid upon notice and demand from the collector. * * *

SEC. 313. (a) The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts. * * *

SEC. 1118. (a) Collectors may receive, * * * uncertified checks in payment of income, war-profits, and excess-profits taxes and any other taxes payable other than by stamp, during such time and under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions to the same extent as if such check had not been tendered.

ART. 78. **Payment of tax; General.**—The tax is due and must be paid within one year from the date of the decedent's death, unless an extension of time for payment thereof has been granted by the Commissioner. (See also article 9.) No discount will be allowed for payment in advance of the due date. The collector will grant to the person paying the tax duplicate receipts, either of which will be sufficient evidence of such payment and entitle the executor to be credited with the amount by any court having jurisdiction to audit or settle his accounts.

Following an investigation of the return, the tax liability will be determined by the Commissioner. If the amount of tax shown on the return has been paid and exceeds the amount of tax as determined, a certificate of overassessment will be prepared and issued, regardless of whether or not a claim for refund of such excess payment is filed unless refundment of such excess is barred by the statute of limitations, or such excess is otherwise not refundable, as in the case of a compromise (see article 101), a closing agreement (see article 76) conclusively fixing the amount of tax liability, or an estoppel. If the amount of tax as determined exceeds the amount of tax already paid but is less than the amount shown on the return, the executor will be notified of the amount of the unpaid tax and payment thereof should be made to the collector. If the audit of the return does not disclose a deficiency tax or overpayment the executor will be notified to that effect. If, as a result of the audit of the return, a deficiency in respect of the tax is finally determined and such deficiency is in whole or in part assessed (see article 77), the executor should pay the amount of the deficiency assessed upon notice and demand from the collector, except in the case a stay of the collection of a jeopardy assessment is obtained by the filing of a bond (see article 96), or an extension of time for payment is granted (see article 83). Until any tax determined by the Commissioner,

including any deficiency, is assessed, the executor should reserve a sufficient portion of the estate to satisfy any unpaid assessment.

ART. 79. The executor shall pay the tax.—The statute provides that the executor shall pay the tax. This duty applies to the entire tax, regardless of the fact that the gross estate consists in part of property which will not come into his possession. If there is no duly qualified executor or administrator, all persons in actual or constructive possession of any property of the decedent are liable for and required to pay the tax to the extent of the value of such property. (See also article 88. As to the personal liability of the executor, see article 102.)

ART. 80. Payment by check.—Collectors may accept uncertified checks in payment of the tax, provided such checks are collectible at par, that is, for the full amount, without any deduction for exchange or other charges. The collector will stamp upon the face of each check before deposit thereof the words "This check is in payment of an obligation to the United States and must be paid at par. No protest." This should be followed by his name and title. The day on which the check is received will be considered the date of payment so far as the taxpayer is concerned, unless the check is returned dishonored. If the bank on which a check is drawn should refuse to pay it at par, the check should be returned through the depositary bank.

All expenses incident to the attempt to collect such a check and the return of it through the depositary bank must be paid by the drawer of the check to the bank on which it is drawn. (See section 3210 of the Revised Statutes, as amended, reenacted by section 1128 (b) of the Revenue Act of 1926.) In the case a check has been returned uncollected by the depositary bank, the collector should proceed to collect the tax as though no check had been given, and the taxpayer will remain liable for payment of the tax and for all interest, legal penalties and additions, if any attach, to the same extent as though such check had not been tendered. A taxpayer who tenders a certified check in payment of the tax is not released from his obligation until the check has been paid. (See ch. 191 of the Act of March 2, 1911.)

Treasury Department Circular No. 176, as amended, prescribes detailed regulations governing the deposit and collection of checks. Collectors are referred to paragraphs 13-16 and paragraph 26 thereof as to the deposit of taxpayers' checks and the handling of uncollected or lost items.

ART. 81. Payment by bonds or notes.—Payment of the tax may be made with bonds or notes of the United States issued under the provisions of the First Liberty Loan Act and the Second Liberty Loan Act, as amended, bearing interest at a higher rate than 4 per

cent per annum, provided they were owned by the decedent continuously for at least six months prior to the date of his death, and upon such date constituted a part of his estate. Such bonds and notes are receivable at par and interest accrued at the time of the payment. When such bonds or notes are to be tendered in payment of the tax, a copy of Department Circular No. 225, as heretofore or hereafter amended or supplemented, should be procured and the requirements thereof carefully noted.

EXTENSION OF TIME FOR PAYMENT OF TAX

SEC. 808. Revenue Act of 1932.

(a) Section 305(b) of the Revenue Act of 1926 is amended to read as follows:

"(b) Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part not to exceed eight years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, and the running of the statute of limitations for assessment and collection, as provided in sections 310(a) and 311(b), shall be suspended for the period of any such extension. If an extension is granted, the Commissioner may require the executor to furnish a bond in such amount, not exceeding double the amount in respect of which the extension is granted, and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the amount in respect of which the extension is granted in accordance with the terms of the extension."

(b) Section 308(i) of the Revenue Act of 1926 is amended to read as follows:

"(i) Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner, with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax), may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of four years. If an extension is granted, the Commissioner may require the executor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. In such case the running of the statute of limitations for assessment and collection, as provided in sections 310(a) and 311(b), shall be suspended for the period of any such extension, and there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. If the part of the deficiency the time for payment of which is so extended is

not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 1 per centum a month for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period."

SEC. 811. Revenue Act of 1932.

(a) Section 305 of the Revenue Act of 1926 is amended by adding at the end thereof a new subdivision to read as follows:

"(e) Where there is included in the value of the gross estate the value of a reversionary or remainder interest in property, the payment of the part of the tax imposed by this title attributable to such interest may, at the election of the executor, be postponed until six months after the termination of the precedent interest or interests in the property, and the amount the payment of which is so postponed shall then be payable, together with interest thereon at the rate of 4 per centum per annum from eighteen months after the date of the decedent's death until such amount is paid. The postponement of payment of such amount shall be under such regulations as the Commissioner with the approval of the Secretary may prescribe, and shall be upon condition that the executor, or any other person liable for the tax, shall furnish a bond in such an amount, and with such sureties, as the Commissioner deems necessary, conditioned upon the payment within six months after the termination of such precedent interest or interests of the amount the payment of which is so postponed, together with interest thereon, as above provided. Such part of any estate, inheritance, legacy, or succession taxes allowable as a credit against the tax imposed by this title as is attributable to such reversionary or remainder interest may be allowed as a credit against the tax attributable to such interest, subject to the percentage limitation contained in section 301(c), if such part is paid, and credit therefor claimed, at any time prior to the expiration of 60 days after the termination of the precedent interest or interests in the property."

(b) The amendment to section 305 of the Revenue Act of 1926 made by subsection (a) of this section, shall not apply, in the case of estates of decedents dying prior to the date of the enactment of this Act, to that part of any payment of Federal estate taxes made prior to such date which is attributable to a reversionary or remainder interest in property.

ART. 82. (a) Extension of time for payment of tax shown on return.—
In any case in which the Commissioner finds that payment, on the due date, of the tax shown on the return would impose undue hardship upon the estate, an extension or extensions of time will be granted for the payment of the tax for a period not to exceed in all eight years from the due date. Extensions of time for tax payment will be granted only in exceptional cases, and those in which it is evident that the payment of the tax on or before the due date would impose upon the estate undue hardship. What constitutes "undue hardship" depends upon the facts in the particular case.

An application for an extension of time for the payment of the tax must be in writing and must contain, or be supported by, sufficient

information under oath from which the Commissioner may determine whether undue hardship would result if the requested extension were refused.

As a condition to the granting of such an extension the Commissioner may require that a penal bond be furnished in an amount not exceeding double the amount for which the extension is desired. If a bond is to be furnished it must be filed with the collector within 10 days after notification by the Commissioner that such bond is required, and shall be conditioned upon the payment, in accordance with the terms of the extension granted, of the tax involved, including any interest thereon, and shall be executed by a surety or sureties, and shall be subject to the approval of the Commissioner. In lieu of such surety or sureties the bond may be secured by deposit of Liberty bonds or other bonds or notes of the United States in a sum equal at their par value to the amount of such bond.

No single extension for more than one year will be granted. Application for extension of time for payment should be filed with the collector, who will refer it to the Commissioner with suitable recommendations.

An extension of time to pay the tax does not relieve the executor from the duty of filing the return on or before the date fixed by the regulations, nor will it operate to prevent the running of interest. (See articles 84 and 85.) An extension of time to pay the tax may extend the period within which taxes allowed as a credit by section 301 (c) are required to be paid and the credit therefor claimed. (See article 9.) The running of the statute of limitations for assessment and collection, as provided in sections 310 (a) and 311 (b), is suspended for the period of the extension. (See articles 77 and 105.)

All applications for extensions of time for payment of tax must be made before the due date of such tax. If the executor desires to obtain an additional extension, the application therefor must be filed with the collector on or before the date of the expiration of the previous extension.

The granting of an extension of time for paying the tax is discretionary with the Commissioner and such authority will be exercised under such conditions as he may deem advisable.

(b) **Extension of time for payment of tax attributable to a reversionary or remainder interest.**—In the case there is included in the value of the gross estate the value of a reversionary or remainder interest in property, the payment of the part of the tax attributable to such interest, except such part of such tax as was paid prior to the enactment of the Revenue Act of 1932, may, at the election of the executor, be postponed until six months after the termination of the precedent

interest or interests in the property. This provision is limited to cases in which the reversionary or remainder interest is included in the decedent's gross estate as such and does not extend to cases in which the decedent creates future estates by his own testamentary act.

Notice of the exercise of the election to postpone the payment of the tax attributable to a reversionary or remainder interest should be filed with the Commissioner before the date prescribed for payment of the tax. There should be filed with the notice of election a certified copy of the will or other instrument under which the reversionary or remainder interest was created. The Commissioner may require the submission of such additional proof as is deemed necessary to disclose the complete facts. If the duration of the precedent interest is dependent upon the life of any person, the application must show the date of birth of such person.

As a prerequisite to the postponement of the payment of the tax attributable to a reversionary or remainder interest, a bond must be furnished in such an amount (at least double the amount of the tax and interest for the estimated duration of the precedent interest), and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the tax and interest accrued thereon within six months after the termination of the precedent interest. In case the duration of the precedent interest is dependent upon the life or lives of any person or persons, or is otherwise indefinite, the bond must be further conditioned upon the principal or surety promptly notifying the Commissioner when such precedent interest terminates and upon the principal or surety notifying the Commissioner during the month of September of each year as to the continuance of the precedent interest. If after the acceptance of a bond it is determined that the amount of the tax attributable to the reversionary or remainder interest was understated in the bond, a new bond or a supplemental bond may be required, or such tax to the extent of the understatement may be collected.

If the decedent's gross estate consists of both a reversionary or remainder interest in property and other property the tax attributable to the reversionary or remainder interest within the meaning of section 811 of the Revenue Act of 1932 and this article is an amount which bears the same ratio to the total tax which the value of the reversionary or remainder interest bears to the entire gross estate, subject to the following qualification: In determining the ratio the value of the reversionary or remainder interest should be reduced by (1) the amount of claims, mortgages, and indebtedness which are a lien upon such interest; (2) losses in respect of such interest during the settlement of the estate which are deductible under the provisions of subdivisions (a) (1) and (b) (1) of sec-

tion 303; (3) any amount in respect of such interest identified as previously taxed property under the provisions of subdivisions (a) (2) and (b) (2) of section 303; (4) any amount deductible on account of devises or bequests of such interests to charitable, etc., uses as described in subdivisions (a) (3) and (b) (3) of section 303. In determining the ratio, the gross estate should likewise be reduced by such deductions having similar relationship to items in the gross estate other than the remainder or reversionary interest.

If the time for payment of the Federal estate tax attributable to a reversionary or remainder interest in property is postponed, all estate, inheritance, legacy, or succession taxes allowable as a credit under the provisions of section 301 (c) of the Revenue Act of 1926, as amended, which are paid and for which credit is claimed within the period provided in such section, will be allowed not to exceed 80 per cent, respectively, of that portion of the Federal estate tax attributable to such interest and to that portion attributable to the other property, and will be applied first to the respective portion of the Federal estate tax which is attributable to the same interests in property to which the estate, inheritance, legacy, or succession taxes are attributable. Estate, inheritance, legacy, or succession taxes, as described in section 301 (c) of the Revenue Act of 1926, as amended, which are attributable to the reversionary or remainder interest and which are paid and for which credit is claimed after the expiration of the period provided in section 301 (c) will also be allowed as a credit against the Federal estate tax attributable to such interest (limited by the requirement that the total credit may not exceed 80 per cent of the total Federal estate tax) if such taxes are paid and credit therefor is claimed prior to the expiration of 60 days after the termination of the preceding interest or interests in the property.

Example: The Federal estate tax attributable to the reversionary or remainder interest is \$5,000, and that attributable to all other property is \$10,000. The estate, inheritance, legacy, or succession taxes paid to the State within the 4-year period are \$9,000, all attributable to property other than the reversionary or remainder interest. Of this \$9,000, the maximum of \$8,000 is credited against the Federal estate tax of \$10,000 attributable to property other than the reversionary or remainder interest, and the balance of \$1,000 is credited to the Federal estate tax attributable to the reversionary interest. Accordingly, the estate will be required to pay \$2,000 (Federal estate tax of \$10,000 attributable to property other than the reversionary or remainder interest, minus the credit of \$8,000) at once, and an extension will be allowed for payment of \$4,000 (Federal estate tax of \$5,000 attributable to the reversionary inter-

est, minus credit of \$1,000). After expiration of the 4-year period, but before expiration of 60 days after termination of the life estate or precedent interest, the estate pays additional State estate, inheritance, legacy, or succession taxes of \$5,000 attributable to the reversionary or remainder interest. As the maximum credit is \$12,000 (80 per cent of \$15,000, the total Federal estate tax) and \$9,000 has already been allowed, there will be an additional allowance of \$3,000, and the estate will be required to pay \$1,000 at the end of the extension period.

If any estate, inheritance, legacy, or succession taxes are imposed by any of the several States, Territories, or the District of Columbia upon a reversionary or a remainder interest in property and other property, without definitely apportioning the tax between such classes of property, for the purposes of this article the amount of such estate, inheritance, legacy, or succession taxes which will be deemed to be attributable to the reversionary or remainder interest will be an amount which bears the same ratio to the total of such taxes as the value of such property bears to the value of the decedent's entire estate upon which the estate, inheritance, legacy, or succession tax was imposed. In determining the ratio, reduction will be made in the value of the reversionary or remainder interest and the value of the gross estate as previously provided in this article for determining the Federal estate tax attributable to the reversionary or remainder interest.

If any part of the tax was paid prior to the enactment of the Revenue Act of 1932, and the gross estate consists of both a reversionary or remainder interest and other property, the portion of the tax so paid attributable to the reversionary or remainder interest is an amount which bears the same ratio to the total tax so paid which the entire tax attributable to the remainder or reversionary interest, computed as provided in this article, bears to the total tax.

The amount of tax the payment of which is postponed under the provisions of section 811 of the Revenue Act of 1932 bears interest at the rate of 4 per cent per annum from 18 months after the date of the decedent's death until such amount is paid. (See article 84 (b).)

ART. 83. Extension of time for payment of deficiency tax.—In any case in which the Commissioner finds that payment of the deficiency tax upon the date prescribed for the payment thereof would impose undue hardship upon the estate, an extension or extensions of time will be granted for payment, with the approval of the Secretary, for a period not to exceed in all four years from the date prescribed for

the payment of the deficiency. Extension of time for such payment will be granted only in exceptional cases and those in which it is evident that payment on or before the date prescribed for payment of the deficiency would impose undue hardship. This provision applies to all estates, regardless of the date of the decedent's death.

What constitutes "undue hardship" depends upon the facts in the particular case. No extension will be granted where the deficiency is due to negligence or intentional disregard of the rules and regulations, or to fraud with intent to evade the tax.

Any application for an extension of time for the payment of a deficiency must be in writing and must contain, or be supported by, information under oath showing wherein undue hardship would result if the extension were refused.

As a condition to the granting of such an extension the Commissioner may require that a penal bond be furnished in an amount not exceeding double the amount of the deficiency. If a bond is to be furnished it must be filed with the collector within 10 days after notification by the Commissioner that such bond is required, and shall be conditioned upon the payment of the deficiency in accordance with the terms of the extension granted, including interest upon the deficiency, as prescribed by the statute (see article 85), until the deficiency is paid, and shall be executed by a surety or sureties and shall be subject to the approval of the Commissioner. In lieu of such surety or sureties the bond may be secured by deposit of Liberty bonds or other bonds or notes of the United States in a sum equal at their par value to the amount of such bond. No single extension for more than one year will be granted. Application for extension of time for payment should be filed with the collector. The collector will refer the application to the Commissioner with suitable recommendations.

Application for extension of time for payment of a deficiency must be made on or before the date prescribed for payment thereof, as shown by the notice and demand from the collector. If the executor desires to obtain an additional extension, the application therefor must be filed with the collector on or before the date of the expiration of the previous extension.

An extension of time to pay the deficiency will not operate to prevent the running of interest. (See article 85.) An extension of time to pay the deficiency may extend the period within which taxes allowed as a credit by section 301 (c) are required to be paid and the credit therefor claimed. (See article 9.) The running of the statute of limitations for assessment and collection, as provided in sections 310 (a) and 311 (b), is suspended for the period of the extension.

(See articles 77 and 105.) No extension of time for paying a deficiency will be granted until after the assessment thereof and notice and demand for payment has been made by the collector.

The granting of an extension of time for paying the deficiency is discretionary with the Commissioner and the Secretary, and such authority will be exercised under such conditions as may be deemed advisable.

INTEREST ON TAX

SEC. 309. (a) (1) Where the amount determined by the executor as the tax imposed by this title, or any part of such amount, is not paid on the due date of the tax, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 1 per centum a month from the due date until it is paid.

(2) Where an extension of time for payment of the amount so determined as the tax by the executor has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under subdivision (c) of section 305, is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subdivision, interest at the rate of 1 per centum a month shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

SEC. 305. * * * (c) If the time for the payment is thus extended there shall be collected, as a part of such amount, interest thereon at the rate of 6 per centum per annum from the expiration of six months after the due date of the tax to the expiration of the period of the extension.

SEC. 308. * * * (h) Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the due date of the tax to the date the deficiency is assessed, or, in the case of a waiver under subdivision (d) of this section, to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier.

(i) * * * the Commissioner * * * may grant an extension for the payment of such deficiency or any part thereof * * *. In such case there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. If the part of the deficiency the time for payment of which is so extended is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 1 per centum a month for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period.

(j) The 50 per centum addition to the tax provided by section 3176 of the Revised Statutes, as amended, shall, when assessed after the enactment of this Act in connection with an estate tax, be assessed,

collected, and paid in the same manner as if it were a deficiency, except that the provisions of subdivision (h) of this section shall not be applicable.

SEC. 309. * * * (b) Where a deficiency, or any interest assessed in connection therewith under subdivision (h) of section 308, or any addition to the tax provided for in section 3176 of the Revised Statutes, as amended, is not paid in full within 30 days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 1 per centum a month from the date of such notice and demand until it is paid.

(c) If a bond is filed, as provided in section 312, the provisions of subdivision (b) of this section shall not apply to the amount covered by the bond.

SEC. 312. * * * (f) When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in subdivision (j) of this section.

(g) If the bond is given before the executor has filed his petition with the Board under subdivision (a) of section 308, the bond shall contain a further condition that if a petition is not filed within the period provided in such subdivision, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision.

(i) When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

(j) In the case of the amount collected under subdivision (i) there shall be collected at the same time as such amount, and as a part of the tax, interest at the rate of 6 per centum per annum upon such amount from the date of the jeopardy notice and demand to the date of notice and demand under subdivision (i) of this section, or, in the case of the amount collected in excess of the amount of the jeopardy assessment, interest as provided in subdivision (h) of section 308. If the amount included in the notice and demand from

the collector under subdivision (i) of this section is not paid in full within 30 days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 1 per centum a month from the date of such notice and demand until it is paid.

SEC. 811. Revenue Act of 1932.

(a) Section 305 of the Revenue Act of 1926 is amended by adding at the end thereof a new subdivision to read as follows:

"(e) Where there is included in the value of the gross estate the value of a reversionary or remainder interest in property, the payment of the part of the tax imposed by this title attributable to such interest may, at the election of the executor, be postponed until six months after the termination of the precedent interest or interests in the property, and the amount the payment of which is so postponed shall then be payable, together with interest thereon at the rate of 4 per centum per annum from eighteen months after the date of the decedent's death until such amount is paid. * * *

ART. 84. (a) **Interest on tax disclosed on return.**—If any portion of the tax indicated by the return is not paid on or before the due date, and no extension of time for payment thereof has been granted, such unpaid portion bears interest at the rate of 1 per cent a month from the due date until payment is received by the collector.

If, however, an extension of time has been granted for paying any portion of the tax shown upon the return, the statute requires the imposition of interest upon the amount, the time for payment of which has been extended, at the rate of 6 per cent per annum from the expiration of six months after the due date of the tax (one year after the date of the decedent's death) to the expiration of the period of the extension. If the amount of tax, the time for payment of which has been extended, and the interest thereon from six months after the due date of the tax, are not paid in full prior to the expiration of the extension, or extensions, granted by the Commissioner, interest accrues upon the total unpaid amount (tax and interest), at the rate of 1 per cent a month from the date of the expiration of the extension, or extensions, until payment is received by the collector. For an example of computation of interest at 1 per cent a month, see article 85.

In any case in which an extension of time is granted for paying the tax, interest will be added to the amount, the time for payment of which has been extended, from six months after the due date until the expiration of the period of extension, or extensions.

(b) **Interest on tax attributable to a reversionary or remainder interest.**—If the time for the payment of the tax attributable to a reversionary or remainder interest is postponed in accordance with the provisions of section 811 of the Revenue Act of 1932, the amount the payment of which is so postponed will bear interest at the rate

of 4 per cent per annum from 18 months after the date of the decedent's death until such amount is paid.

ART. 85. Interest on deficiency tax.—The statute provides that the deficiency shall bear interest at the rate of 6 per cent per annum from the due date for payment of the tax (one year after date of decedent's death) to the date the deficiency is assessed, except in the case of a waiver of the restrictions against the assessment and collection of the deficiency, and that such interest shall be assessed at the same time as the deficiency of which it becomes an integral part. The deficiency in respect to which the restrictions against the assessment and collection are waived under section 308 (d) bears interest at the rate of 6 per cent per annum from the due date of the tax to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier. The term "deficiency" includes any tax resulting from the correction of a mathematical error appearing upon the face of a return. (See second paragraph of article 77.)

Such portion of the deficiency assessed, except a deficiency with respect to which a jeopardy assessment is made and a petition to the Board is filed, as is not paid within 30 days from the date of notice and demand by the collector, bears interest at the rate of 1 per cent a month from the date of such notice and demand until payment is received by the collector unless, however, an extension for the payment thereof has been granted. If an extension of time for paying the deficiency, or any portion thereof, has been granted the statute requires the imposition of interest upon the amount, the time for payment of which has been extended, at the rate of 6 per cent per annum for the period of the extension, and if not paid on or before the expiration of the extension or extensions interest accrues upon the total unpaid amount (tax, interest, or additions thereto) at the rate of 1 per cent a month from the date of the expiration of the extension until payment is received by the collector.

In any case in which an extension of time is granted for paying the deficiency, interest will be added to the amount, the time for payment of which has been extended, for the period of the extension, or extensions.

Example: A deficiency in the tax amounting to \$500 was determined and assessment thereof made on the 15th day of July, the due date of the tax being March 15 preceding. The amount of the assessment in this instance is \$500, plus interest thereon at 6 per cent per annum from and including March 16 to and including July 15, amounting to \$10.03, computed upon the basis of 365 days to the year (or 366 days in a leap year), or a total assessment of

\$510.03, which thereupon becomes the amount of the deficiency. The date of the notice and demand by the collector for payment was August 1 following the assessment. Within 30 days thereafter \$255.02 was paid and request was made for an extension of time for paying the balance of the deficiency (\$255.01), and an extension from August 1 to and including February 1 was granted for the payment thereof. This amount bears interest at 6 per cent per annum for the period of the extension, amounting to \$7.59. The remaining liability is, therefore, \$262.60. The amount of liability in this instance was not paid until August 1 following the expiration of the extension. Inasmuch as the \$255.01, the time for payment of which was extended, was not paid until after the expiration of the extension, interest accrued thereon at the rate of 1 per cent a month for six months, amounting to \$15.30. (The term "month" means calendar month; i. e., a period terminating with the day of the succeeding month numerically corresponding to the day preceding the beginning of the period. If there is no such corresponding day of the succeeding month, the last day of such succeeding month is the last day of the period. If interest at the rate of 1 per cent a month is to be computed for a period of one or more months and a fraction of a month, it should be computed for the number of whole months, and then for the fraction of a month upon the basis of the number of days in the month which includes such fraction. Thus, for example, the elapsed period from February 14 to March 13, both dates included, is one month, and the period from February 14 to March 11, both dates included, is twenty-six twenty-eighths of a month, except that if the year be a leap year the period is twenty-seven twenty-ninths of a month.) The amount due on August 1 was, therefore, \$277.90 ($\$255.01 + 7.59 + 15.30$).

Any addition to the tax resulting from the imposition of an ad valorem penalty under the provisions of section 3176, Revised Statutes, is subject to the same provisions of law relating to the assessment, collection, and the accrual of interest, as the deficiency tax, except that such addition to the tax is not subject to any interest between the due date for payment of the tax (one year after date of decedent's death) and the date of the assessment thereof.

If a stay of the collection of a jeopardy assessment of a deficiency tax, or any addition to the tax resulting from the imposition of an ad valorem penalty, is obtained and a petition for a redetermination of the deficiency is filed with the Board of Tax Appeals, interest accrues on such unpaid portion of the deficiency or penalty, if any, determined by a decision of the Board which is made final, at the rate of 6 per cent per annum from the date of the notice and demand from the collector following the jeopardy assessment to the

date of the notice and demand by the collector subsequent to the final action taken on the petition filed with the Board. If the amount which the Board determines should have been assessed is not paid in full within 30 days after such notice and demand subsequent to the decision of the Board which has become final, interest accrues upon the unpaid amount at the rate of 1 per cent a month from the date of such notice and demand until it is paid. If the amount (exclusive of any ad valorem penalty) determined by the Board as the amount which should have been assessed is greater than the amount actually assessed the difference bears interest at the rate of 6 per cent per annum from the due date of the tax until assessment of such difference. If the collection of the jeopardy assessment is stayed, and no petition is filed with the Board for a redetermination of the deficiency, interest accrues upon the deficiency so assessed at the rate of 6 per cent per annum from the date of the jeopardy notice and demand to the date of the notice and demand made by the collector after the expiration of the 60 days from the mailing by the Commissioner of the notice of the deficiency, and if not paid within 30 days after such second notice and demand by the collector interest accrues at the rate of 1 per cent a month from the date of such second notice and demand until paid.

COLLECTION OF TAX

SEC. 314. (a) If the tax herein imposed is not paid on or before the due date thereof the collector shall, upon instruction from the Commissioner, proceed to collect the tax under the provisions of general law, or commence appropriate proceedings in any court of the United States having jurisdiction, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. This subdivision in so far as it applies to the collection of a deficiency shall be subject to the provisions of section 308.

ART. 86. **Remedy not exclusive.**—The remedy by action, here provided, is not exclusive. For other available remedies for the collection of the tax, see article 105.

REIMBURSEMENT

SEC. 314. * * * (b) If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been

reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution. If any part of the gross estate consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds, in excess of \$40,000, of such policies bear to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio.

ART. 87. Right to reimbursement not enforceable by Commissioner.— If any portion of the tax is paid by or collected out of that part of the estate passing to, or in the possession of, any person other than the duly qualified executor or administrator, such person may be entitled to reimbursement, either out of the undistributed estate or by contribution from other beneficiaries whose shares or interests in the estate would have been reduced had the tax been paid before distribution of the estate, or whose shares or interests are subject either to an equal or prior liability for the payment of taxes, debts, or other charges against the estate. The executor is entitled to require beneficiaries under insurance policies to bear their proportion of the tax. These provisions, however, are not designed to curtail the right of the Commissioner to collect the tax from any person, or out of any property, liable therefor. The Commissioner can not be required to apportion the tax among the persons liable, nor to enforce any right to reimbursement or contribution.

LIEN

SEC. 315 (as amended by section 613 (b) of the Revenue Act of 1928, and as further amended by section 803 (c) and section 809 of the Revenue Act of 1932).

(a) Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

(b) If (1) except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death, or makes a transfer, by trust or otherwise, under

which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession or enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom, or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

SEC. 313. * * * (b) If the executor makes written application to the Commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Commissioner (as soon as possible, and in any event within one year after the making of such application, or, if the application is made before the return is filed, then within one year after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in section 310) shall notify the executor of the amount of the tax. The executor, upon payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

(c) The provisions of subdivision (b) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless the title to such part of the gross estate has passed to a bona fide purchaser for value, in which case such part shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

ART. 88. Property subject to lien.—The lien imposed by section 315 of the Revenue Act of 1926 attaches at the date of the decedent's death to every part of the gross estate, whether or not the property comes into the possession of the duly qualified executor or administrator. It attaches to the extent of the tax shown to be due by the return and of any deficiency tax found to be due upon review and audit.

The lien upon the entire property constituting the gross estate continues for a period of 10 years after the decedent's death, except—

(1) If the tax is paid in full before the expiration of such period.

(2) Such portion of the gross estate as is used for the payment of charges against the estate and expenses of its administration allowed by any court having jurisdiction thereof.

(3) Such portion of the gross estate as has passed to a bona fide purchaser for value after payment of the full amount of tax determined by the Commissioner pursuant to a request of the executor for discharge from personal liability, as authorized by section 313 (b) and (c) (see article 67), but there is substituted a like lien upon the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

(4) Such property as was received from the decedent as a transfer by trust or otherwise in contemplation of or intended to take effect in possession or enjoyment at or after his death, or under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession or enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom (except in case the transfer was a bona fide sale for an adequate and full consideration in money or money's worth), and was sold by the transferee to a bona fide purchaser for such a consideration. In such case the lien attaches to all the property of the transferee except such thereof as may be sold to a bona fide purchaser for such a consideration.

(5) If a certificate releasing such lien is issued. (See article 89.)

ART. 89. Release of lien.—The statute provides that if the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may issue his certificate releasing any or all property of the estate from the lien. The issuance of certificates releasing such lien is a matter resting within the discretion of the Commissioner, and certificates will be issued only in case there is actual need therefor. The primary purpose of such release is not to evidence payment or satisfaction of the tax, but to permit the transfer of property free from the lien in case it is necessary to clear title. Receipts for payment of the tax are issued by the collector.

If the tax liability has been fully discharged a certificate may be issued releasing the lien as to any or all property of the estate. If the tax liability has not been fully discharged, no general release of all property of the estate will be granted but certificates releasing the lien upon particular items of property may be issued by the Commissioner who may require as a prerequisite, in such an amount as he may designate, a partial payment of tax or the furnishing of an indemnity bond with such surety or sureties as he deems

necessary. In lieu of such surety or sureties the indemnity bond may be secured by deposit of Liberty bonds or other bonds or notes of the United States in a sum equal at their par value to the amount of such bond. The tax will be considered fully discharged only when investigation has been completed and payment of the tax, including any deficiency finally determined, has been made.

The application for a release should be filed with the Commissioner and should explain the circumstances that require the release, fully describe the particular items for which the release is desired, and show the applicant's relationship to the estate, such as executor, heir, devisee, legatee, beneficiary, transferee, or purchaser. If the return, Form 706, has not been filed, an affidavit may be required showing the value of the property to be released, the basis for such valuation, the approximate value of the gross estate, the approximate value of the total real property included in the gross estate, and in case the property is to be sold or transferred, the name and address of the purchaser or transferee and the consideration to be received.

PENALTIES

SEC. 320. (a) Whoever knowingly makes any false statement in any notice or return required to be filed under this title shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both.

(b) Whoever fails to comply with any duty imposed upon him by section 304, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Commissioner or any collector or law officer of the United States or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this title, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

SEC. 1114. (a) Any person required under this Act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this Act or the payment thereof, shall, in addition to other pen-

alties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * * * *

(e) Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

(f) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

SEC. 1103. Section 3176 of the Revised Statutes, as amended, is amended to read as follows: "Sec. 3176 * * * In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 per centum of its amount.

"The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax."

SEC. 616. Revenue Act of 1928.

Any person who, in connection with any compromise under section 3229 of the Revised Statutes, as amended, or offer of such compromise, or in connection with any closing agreement under section 606 of this Act, or offer to enter into any such agreement, willfully (1) conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or (2) receives, destroys, mutilates, or falsifies any book,

document, or record, or makes under oath any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax, shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

SEC. 403. Revenue Act of 1932.

Except as provided in section 402, the tax imposed by section 401 of this Act shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by section 301 (a) of the Revenue Act of 1926, except that in the case of a resident decedent a return shall be required if the value of the gross estate at the time of the decedent's death exceeds \$50,000.

ART. 90. Nature of penalties.—Two kinds of penalties are provided for delinquency with respect to the duties imposed by the statute:

- (1) A specific penalty, to be recovered by suit, unless previously paid or adjusted by the acceptance of an offer in compromise; and
- (2) A penalty of a certain percentage of the tax, to be added to and collected in the same manner as the tax.

In any case in which more than one penalty is provided the Government may assert any one or more thereof.

ART. 91. Penalties for false or fraudulent notice or return.—In the case any statement in the notice or return is knowingly false, the person making it is subject to a penalty not exceeding \$5,000, or imprisonment for not exceeding one year, or both, and for a false or fraudulent return, 50 per cent will be added to the amount of the tax. Any person required to file any notice or make a return who willfully fails to do so at the time required shall be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

Any person who willfully aids or assists in the preparation or presentation of a false or fraudulent notice or return, or procures, counsels, or advises the preparation or presentation of such a notice or return, whether such falsity or fraud is with or without the knowledge or consent of the person required to make the notice or return, will be guilty of a felony and, upon conviction thereof, fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

ART. 92. Penalty for failure to file notice or return.—For failure to file the notice or return within the time prescribed, the person in default is subject to a penalty not exceeding \$500; and, for failure to file the return within the time prescribed, 25 per cent will be added to the amount of the tax, except that if a return is filed after such time and it is shown that the failure so to file was due to

a reasonable cause and not to willful neglect no such addition will be made to the tax.

The ad valorem penalty of 25 per cent of the tax will not be asserted if an extension of time for filing the return was granted by the collector pursuant to the provisions of article 68, and the return is actually filed within the period of extension granted.

ART. 93. Penalty for failure to pay tax, exhibit property, keep or exhibit records, etc., and for concealment of assets.—Any person in possession or control of any record, file, or paper, containing or supposed to contain information relating to the estate, or having in his possession or control property comprised in the gross estate of the decedent, who fails to exhibit the same upon the request of the Commissioner or any collector or law officer of the United States, or his duly authorized deputy or agent, in the performance of his duties, or having knowledge or information of any fact or facts of a material bearing upon the liability, or the extent of liability, of the estate to the tax, who fails to make disclosure thereof upon request of the Commissioner or any revenue agent or inspector designated by him for that purpose, is liable to a penalty not to exceed \$500, to be recovered by civil action. Such a request must be granted whether or not he believes that a compliance therewith is material.

Any person required to pay the tax, keep any records, or supply any information, for the purpose of the computation, assessment, or collection of the tax, who willfully fails to pay such tax, keep such records, or supply such information, as required by the law or regulations, shall, in addition to other penalties, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

Any person who willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

Any person who in connection with any compromise entered into or offer made under the provisions of section 3229 of the Revised Statutes as amended, or, who in connection with any closing agreement under section 606 of the Revenue Act of 1928, or the offer to enter into any such agreement, willfully conceals from any officer or employee of the United States any property belonging to the estate, or any person liable in respect of the tax, or receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement, relating to the estate or its value or the

financial condition of any person liable in respect of the tax, shall, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both.

ART. 94. Penalty for assisting, procuring, or advising the preparation or presentation of false or fraudulent documents.—Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent affidavit, claim, or document, shall, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such affidavit, claim, or document, be guilty of a felony, and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

ABATEMENT AND STAY OF COLLECTION OF JEOPARDY ASSESSMENT

SEC. 312. * * * (f) When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in subdivision (j) of this section.

(g) If the bond is given before the executor has filed his petition with the Board under subdivision (a) of section 308, the bond shall contain a further condition that if a petition is not filed within the period provided in such subdivision, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision.

(h) Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The executor shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the executor, be proportionately reduced. If the Board determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Board is rendered the bond shall, at the request of the executor, be proportionately reduced.

(i) When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a de-

cision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector. * * *

(k) No claim in abatement shall be filed in respect of any assessment made after the enactment of this Act in respect of any estate * * * tax.

ART. 95. Claim for abatement.—No claim for abatement may be filed in respect of any assessment made after the effective date of the Revenue Act of 1926. The amount of any assessment directed to be abated by the statute as the result of a decision of the Board of Tax Appeals which has become final and all overassessments determined as a result of audit or examination of returns will be abated by the Commissioner without action on the part of the executor.

ART. 96. Collection of jeopardy assessment stayed by filing bond.—If a jeopardy assessment has been made, the executor, within 30 days after notice and demand from the collector for payment of the amount of the jeopardy assessment may obtain a stay of collection of the whole, or any part, of the amount of such assessment by filing with the collector a bond in such amount not exceeding double the amount as to which the stay is desired, and with such sureties as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated as a result of a decision of the Board which has become final, together with the interest thereon, as provided in the statute. (See article 85.) In lieu of such sureties there may be deposited Liberty bonds or other bonds and notes of the United States in a sum equal at their par value to the amount of such bond. The petition with the Board of Tax Appeals for redetermination of the deficiency in respect to which the jeopardy assessment was made must be filed within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) after the mailing by the Commissioner of the notice of the final determination of the deficiency. (See article 76.) If the bond is given before the petition is filed with the Board, the bond shall contain a further condition that if a petition is not filed within the 90 days, then the amount, the collection of which is stayed by the bond, shall be paid on notice and demand at any time after the expiration of such 90-day period, together with interest thereon at the rate of 6 per

cent per annum from the date of the jeopardy notice and demand made by the collector to the date of notice and demand made after the expiration of the 90-day period.

ART. 97. Accrual of interest as affected by the stay of the collection of a jeopardy assessment.—For rules relating to the accrual of interest where the collection of a jeopardy assessment is stayed by the filing of a bond, see article 85.

ART. 98. Limitation of time to file bond to stay collection of jeopardy assessment.—If it is desired to stay the collection of the whole, or any part, of the amount in respect to which a jeopardy assessment has been made, the bond referred to in article 96 must be filed with the collector within 30 days after notice and demand by the collector for the payment of the amount of the jeopardy assessment.

REFUNDS

SEC. 319. (a) If the Commissioner has mailed to the executor a notice of deficiency under subdivision (a) of section 308 and if the executor after the enactment of this Act files a petition with the Board of Tax Appeals within the time prescribed in such subdivision, no refund in respect of the tax shall be allowed or made and no suit for the recovery of any part of such tax shall be instituted in any court, except—

(1) As provided in subdivision (c) of this section or in subdivision (i) of section 312 or in subdivision (b), (e), or (g) of section 318 or in subdivision (d) of section 1001; and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the Board which has become final; and

(3) As to any amount collected after the statutory period of limitations upon the beginning of distraint or a proceeding in court for collection has expired; but in any such claim for refund or in any such suit for refund the decision of the Board which has become final, as to whether such period had expired before the notice of deficiency was mailed, shall be conclusive.

(b) All claims for the refunding of the tax imposed by this title alleged to have been erroneously or illegally assessed or collected must be presented to the Commissioner within three years next after the payment of such tax.

(c) If the Board finds that there is no deficiency and further finds that the executor has made an overpayment of tax, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Board has become final, be credited or refunded to the executor as provided in section 3220 of the Revised Statutes, as amended. Such refund shall be made either (1) if claim therefor was filed within the period of limitation provided for by law, or (2) if the petition was filed with the Board within four years after the tax was paid, or, in the case of a tax imposed by this title, within three years after the tax was paid.

SEC. 810. Revenue Act of 1932.

(a) Section 319(b) of the Revenue Act of 1926 is amended to read as follows:

"(b) All claims for the refunding of the tax imposed by this title alleged to have been erroneously or illegally assessed or collected must be presented to the Commissioner within three years next after the payment of such tax. The amount of the refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the three years immediately preceding the allowance of the refund."

(b) The last sentence of section 319(c) of the Revenue Act of 1926 is amended to read as follows:

"No such refund shall be made of any portion of the tax paid more than four years (or, in the case of a tax imposed by this title, more than three years) before the filing of the claim or the filing of the petition, whichever is earlier."

(c) Title III of the Revenue Act of 1924 is amended by inserting after section 318 a new section to read as follows:

"SEC. 318½. The amount of any refund of the tax imposed by Part I of this title shall not exceed the portion of the tax paid during the four years immediately preceding the filing of the claim, or if no claim was filed, then during the four years immediately preceding the allowance of the refund."

(d) Section 319(b) of the Revenue Act of 1926, as amended by this Act, and section 318½ of the Revenue Act of 1924, as added by this Act, shall not bar from allowance a claim for refund filed prior to the enactment of this Act which but for such enactment would have been allowable.

SEC. 504. Revenue Act of 1934. * * *

(d) The last sentence of section 319(c) of the Revenue Act of 1926, as amended, is amended to read as follows: "No such refund shall be made of any portion of the tax unless the Board determines as part of its decision that it was paid within four years (or in the case of a tax imposed by this title, within three years) before the filing of the claim or the filing of the petition, whichever is earlier."

(e) The amendments made by subsections (a), (b), (c), and (d) of this section shall have no effect in the case of any proceeding before the Board on a petition if any hearing by the Board thereon has been held prior to 30 days after the date of the enactment of this Act.

SEC. 325. Any tax that has been paid under the provisions of Title III of the Revenue Act of 1924 prior to the enactment of this Act in excess of the tax imposed by such title as amended by this Act shall be refunded without interest.

SEC. 1106. * * *

(b) If after a determination and assessment in any case the taxpayer has paid in whole any tax or penalty, or accepted any abatement, credit, or refund based on such determination and assessment, and an agreement is made in writing between the taxpayer and the Commissioner, with the approval of the Secretary, that such determination and assessment shall be final and conclusive, then (except upon a showing of fraud or malfeasance or misrepresentation of fact materially affecting the determination or assessment thus made) (1)

the case shall not be reopened or the determination and assessment modified by any officer, employee, or agent of the United States, and (2) no suit, action, or proceeding to annul, modify, or set aside such determination or assessment shall be entertained by any court of the United States.

SEC. 606. Revenue Act of 1928.

(a) **Authorization.**—The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commissioner) is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal-revenue tax for any taxable period ending prior to the date of the agreement.

(b) **Finality of agreements.**—If such agreement is approved by the Secretary, or the Undersecretary, within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

(c) Section 1106(b) of the Revenue Act of 1926 is repealed, effective on the expiration of 30 days after the enactment of this Act, but such repeal shall not affect any agreement made before such repeal takes effect.

Revised Statutes, section 3220 (as amended by section 3, Act of May 29, 1928, Public, No. 611—70th Congress). The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal-revenue taxes collected by him, with the cost and expense of suit; also all damages and cost recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress, by internal-revenue districts and alphabetically arranged, of all refunds in excess of \$500, at the beginning of each regular session of Congress of all transactions under this section.

Revised Statutes, section 3228 (as amended by section 619 (c), Revenue Act of 1928 [U. S. C., Sup. VII, title 26, section 1433]).

(a) All claims for the refunding or crediting of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrong-

fully collected must, except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes, be presented to the Commissioner of Internal Revenue within four years next after the payment of such tax, penalty, or sum.

(b) Except as provided in section 284 of the Revenue Act of 1928, claims for credit or refund (other than claims in respect of taxes imposed by the Revenue Act of 1916, the Revenue Act of 1917, or the Revenue Act of 1918) which at the time of the enactment of the Revenue Act of 1921 were barred from allowance by the period of limitation then in existence, shall not be allowed.

SEC. 607. Revenue Act of 1928.

Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid (whether before or after the enactment of this Act) after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim.

SEC. 608. Revenue Act of 1928.

A refund of any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) made after the enactment of this Act, shall be considered erroneous—

(a) if made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed; or

(b) in the case of a claim filed within the proper time and disallowed by the Commissioner after the enactment of this Act, if the refund was made after the expiration of the period of limitation for filing suit, unless—

(1) within such period suit was begun by the taxpayer, or

(2) within such period, the taxpayer and the Commissioner agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of final decision in one or more named cases then pending before the United States Board of Tax Appeals or the courts.

SEC. 503. Revenue Act of 1934.

Section 608(b)(2) of the Revenue Act of 1928 is amended by adding at the end thereof a new sentence to read as follows: "If such agreement has been entered into, the running of such statute of limitations shall be suspended in accordance with the terms of the agreement."

SEC. 610. Revenue Act of 1928.

(a) Any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) refund of which is erroneously made, within the meaning of section 608, after the enactment of this Act, may be recovered by suit brought in the name of the United States, but only if such suit is begun within two years after the making of such refund.

(b) Any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) which has been erroneously refunded (if such refund would not be considered as erroneous under section 608) may be recovered by suit brought in the name of the United States, but only if such suit is begun before the expiration of two years after the making of such refund or before May 1, 1928, whichever date is later.

SEC. 502. Revenue Act of 1934.

(a) Section 610 of the Revenue Act of 1928 is amended by adding at the end thereof a new subsection to read as follows:

"(c) Despite the provisions of subsections (a) and (b) such suit may be brought at any time within five years from the making of the refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact."

(b) The amendment made by subsection (a) of this section shall not apply to any suit which was barred on the date of the enactment of this Act.

SEC. 611. Revenue Act of 1928.

If any internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) was, within the period of limitation properly applicable thereto, assessed prior to June 2, 1924, and if a claim in abatement was filed, with or without bond, and if the collection of any part thereof was stayed, then the payment of such part (made before or within one year after the enactment of this Act) shall not be considered as an overpayment under the provisions of section 607, relating to payments made after the expiration of the period of limitation on assessment and collection.

SEC. 612. Revenue Act of 1928.

Section 1106 (a) of the Revenue Act of 1926 is repealed as of February 26, 1926.

SEC. 1103. Revenue Act of 1932.

(a) Section 3226 of the Revised Statutes, as amended, is amended to read as follows:

"SEC. 3226. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which such suit or proceeding relates."

(b) Suits or proceedings instituted before the date of the enactment of this Act shall not be affected by the amendment made by subsection

(a) of this section to section 3226 of the Revised Statutes. In the case of suits or proceedings instituted on or after the date of the enactment of this Act where the part of the claim to which such suit or proceeding relates was disallowed before the date of the enactment of this Act, the statute of limitations shall be the same as provided by such section 3226 before its amendment by subsection (a) of this section.

SEC. 1104. Revenue Act of 1932.

Where the Commissioner has (before or after the enactment of this Act) signed a schedule of overassessments in respect of any internal revenue tax imposed by this Act or any prior revenue Act, the date on which he first signed such schedule (if after May 28, 1928) shall be considered as the date of allowance of refund or credit in respect of such tax.

ART. 99. Claim for refund.—A claim for refund of estate tax, or for refund of interest or penalties, erroneously or illegally collected should be made on the form prescribed by the Treasury Department (Form 843), and should be filed with the collector of internal revenue, although a claim will not be considered defective solely by reason of the fact that it is not made on the form or that it is filed with the Commissioner of Internal Revenue. The claim must set forth in detail and under oath each ground upon which a refund is claimed, and facts sufficient to apprise the Commissioner of the exact basis thereof. Any claim which does not comply with the requirements of the preceding sentence will not be considered for any purpose as a claim for refund.

Claims for the refund of estate tax imposed by the Revenue Act of 1926 and the additional estate tax imposed by the Revenue Act of 1932, or the Revenue Act of 1932 as amended by the Revenue Act of 1934, must be filed within three years next after the payment of the amount sought to be refunded. If, however, the tax was imposed by the estate tax title of any of the Acts prior to the Revenue Act of 1926 the period within which the claim must be filed is four years after payment of the tax. Any tax imposed by Title III of the Revenue Act of 1924 which was paid prior to the enactment of the Revenue Act of 1926 in excess of the amount of tax imposed by the Revenue Act of 1924 as amended by the Revenue of 1926 is not deemed to have been erroneously or illegally collected and hence a claim for the refund of such excess is not subject to the 4-year limitation set out in the next preceding sentence. Furthermore, the 4-year limitation of time within which claims for refund must be filed does not apply in a case in which a refund is sought under the provisions of the last paragraphs of sections 401 and 403 of the Revenue Act of 1921.

The amount of the refund shall not exceed the portion of the tax paid during the three or four year period, as the case may be, immediately preceding the filing of the claim, or the filing of the petition with the Board of Tax Appeals. Upon receipt of any claim for refund, other than a claim for refund of an overpayment determined in accordance with a decision of the Board of Tax Appeals which has become final, the return of the estate will be reaudited and only the excess payment determined by the Com-

missioner as a result of consideration of the claim and reaudit will be refunded. If the reaudit reveals that the tax has been underpaid, the amount of such underpayment will be collected unless the collection thereof is barred.

If a petition was filed with the Board of Tax Appeals for the redetermination of a deficiency, as provided by section 308, and the Board finds that the executor has made an overpayment of the tax, and further determines as part of its decision that any portion of the overpayment was made within three years (or, within four years, in a case of a tax imposed by an Act prior to the Revenue Act of 1926) before the filing of the claim or the filing of the petition, whichever is earlier, the amount of such portion of the overpayment will be refunded. The portion of the overpayment made within such period will be refunded, even though the Board has not determined as part of its decision that the overpayment was so made, if a hearing upon the petition was held by the Board prior to the expiration of 30 days after the date of the enactment of the Revenue Act of 1934.

Save in the case of a claim for refund of an overpayment computed in accordance with a decision of the Board of Tax Appeals which has become final, the burden of proof rests upon the claimant and all facts relied upon in support of the claim must be clearly set forth under oath. Every affidavit, argument, brief, or statement of facts, prepared or filed by an attorney or agent as argument or evidence in the matter of a protest, must have therein a statement signed by such attorney or agent showing whether or not he prepared such document and whether or not the attorney or agent knows of his own knowledge that the facts contained therein are true. In the case there is a hearing, should the executor not appear in person, his representative who appears must present a properly executed power of attorney and be enrolled to practice before the Treasury Department. (See article 74.) With all claims there should be submitted:

(1) If the claim is made by an executor or administrator, a certificate of the court must be furnished showing that the appointment remains in full force and effect.

(2) If the executor or administrator has been discharged and no administrator de bonis non has been appointed and qualified, there should be submitted, in lieu of the certificate above mentioned, (a) a certified copy of the court order granting the discharge, and (b) a certified copy of the order of distribution, or, if such order does not fully disclose the identity of the person or persons entitled to receive any amount that may be refunded and the percentage or proportion thereof to which each, if more than one, is entitled, there should be submitted a certified copy of the decedent's will, if any, and such

further proof as may be requisite to establish both the identity of such person or persons and the percentage or proportion of the amount sought to be refunded to which each, in the case there are more than one, is entitled.

If upon audit of the return filed by the executor the Commissioner determines that an overassessment has been made on account of the tax, a certificate of overassessment will be prepared and issued, even though claim for refund of such excess payment has not been filed, except as provided in article 76. The certificate of overassessment, issued if no claim for refund has been filed, will be addressed to the executor and the documentary evidence, as set out above, identifying the person or persons entitled to receive the refund will be required.

A refund is erroneous if made after the enactment of the Revenue Act of 1928, when made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed. In the case a claim was filed within the proper time and such claim was disallowed by the Commissioner after the enactment of the Revenue Act of 1928, and the period of limitation for filing suit by the executor had expired prior to the making of the refund, a refund based upon such claim is erroneous unless suit was begun by the executor within the period of limitation for filing suit, or unless within such period the executor and the Commissioner agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of final decision of one or more named cases then pending before the Board of Tax Appeals or the courts. Erroneous refunds, as above described, may be recovered by suit brought in the name of the United States within two years after the making of such refunds. An erroneous refund, though not considered as erroneous under section 608 of the Revenue Act of 1928, may be recovered in the same manner if the suit is begun within two years after the making of such refund or before May 1, 1928, whichever date is later. Erroneous refunds, whether erroneous under the provisions of section 608 of the Revenue Act of 1928 or otherwise, may be recovered by suit brought within five years of the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact and suit for recovery was not barred on the date of the enactment of the Revenue Act of 1934.

A claim for the payment of a judgment rendered against a collector of internal revenue representing Federal estate tax, penalties, or other sums collected in connection therewith should be made on Form 843 and filed with the Commissioner of Internal Revenue,

Washington, D. C. The claimant should state the names of all parties to the action, the date of its commencement, the date of the judgment, the court in which it was recovered, its amount, and the fact that the action related to Federal estate tax or interest or penalties in connection therewith. To the claim there should be annexed two certified copies of the final judgment, a certificate of probable cause (see section 989 of the Revised Statutes [U. S. C., title 28, sec. 842]) and, if refund is claimed, an itemized bill of the costs paid, receipted by the clerk or other proper officer of the court.

A claim for the payment of a judgment rendered against the United States representing Federal estate tax, penalties, or other sums collected in connection therewith should be made on Form 843 in the manner prescribed in the preceding paragraph, except that—

(a) a certificate of probable cause is not required,

(b) the claims shall be executed in duplicate, and

(c) in the case of a judgment rendered by the Court of Claims there may be submitted, in place of a certified copy of the final judgment, a certificate of the judgment issued by the clerk of the court and two copies of the court's opinion, if any was rendered.

INTEREST ON REFUNDS

SEC. 614. Revenue Act of 1928. [Amended by section 319, Public, No. 212—72d Congress, and section 2 of Title II, Public, No. 325—72d Congress. Section 614, Revenue Act of 1928, restored as originally enacted, by section 14, Public, No. 428—72d Congress.]

(a) Interest shall be allowed and paid upon any overpayment in respect of any internal-revenue tax, at the rate of 6 per centum per annum, as follows:

* * * * *

(2) In the case of a refund, from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days, such date to be determined by the Commissioner.

* * * * *

(c) Section 1116 of the Revenue Act of 1926 is repealed.

(d) Subsections (a), (b), and (c) shall take effect on the expiration of 30 days after the enactment of this Act, and shall be applicable to any credit taken or refund paid after the expiration of such period, even though allowed prior thereto.

SEC. 802. Revenue Act of 1932.

(a) Section 301 (b) of the Revenue Act of 1926 is amended to read as follows:

“(c) * * *

“(2) * * *

Refund based on the credit may (despite the provisions of section 319) be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest, except that where the overpayment was made prior to the enactment of the Reve-

nue Act of 1932, then interest shall be allowed and paid on the amount refunded at the rate of 6 per centum per annum from the date of the overpayment to the date of such enactment."

ART. 100. Payment of claims and interest.—Under the law warrants in payment of claims allowed can only be drawn payable to the person or persons entitled to the proceeds, and consequently can not be drawn payable to attorneys or agents. If the claimants are indebted to the United States for taxes, such taxes must be paid before the warrants are delivered. (U. S. C., Sup. VII, title 31, sec. 227.)

Upon the allowance of the claim for refund of any tax or penalty paid, unless the refund results from the allowance of a credit for payment of estate, inheritance, legacy, or succession taxes, the statute provides for the payment of interest upon the total amount of such refund at the rate of 6 per cent per annum from the date such tax or penalty was paid to a date preceding the date of the refund check by not more than 30 days, such date to be determined by the Commissioner. If a refund is based upon the credit for payment of estate, inheritance, legacy, or succession taxes allowed by subdivision (b) of section 301, as amended by section 802 of the Revenue Act of 1932 (see article 9), the refund will be made without interest unless the overpayment was made prior to the enactment of the Revenue Act of 1932, in which case interest will be paid upon the amount of such overpayment at the rate of 6 per cent per annum from the date of payment to the date of the enactment of such Act.

POWER TO COMPROMISE OR REMIT PENALTIES

Revised Statutes, section 3229 (Comp. Sts., 1916, sec. 5952) [U. S. C., Sup. VII, title 26, sec. 1661].

The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws instead of commencing suit thereon; and, with the advice and consent of the said Secretary and the recommendation of the Attorney General, he may compromise any such case after a suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of the Commissioner the opinion of the Solicitor of Internal Revenue, or of the officer acting as such, with his reasons therefor, with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise.

ART. 101. Compromise of taxes and penalties.—Offers in compromise should be filed with the appropriate collector of internal revenue. No offer in compromise of tax, interest, and ad valorem penalty collectible as part of the tax will be accepted unless there is a substantial doubt as to either liability or collectibility. (The functions prescribed for the "Solicitor of Internal Revenue" by section 3229 of

the Revised Statutes are now exercised by the "Assistant General Counsel for the Bureau of Internal Revenue." See section 1201 (a) of the Revenue Act of 1926 and section 512 of the Revenue Act of 1934.)

PERSONAL LIABILITY OF EXECUTOR

SEC. 518. Revenue Act of 1934.

(a) Section 3467 of the Revised Statutes (U. S. C., title 31, ch. 6, sec. 192) is amended to read as follows:

"SEC. 3467. Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid."

(b) The amendment made by subsection (a) shall be applicable in the case of payments made after June 6, 1932.

ART. 102. *Extent of liability.*—If the executor, before paying all the estate tax, pays, in whole or in part, any debt due by the decedent or the decedent's estate, or distributes any portion of the estate, he is personally liable, to the extent of such payment or distribution, for so much of the estate tax as remains due and unpaid.

The term executor includes every person in actual or constructive possession of any property of the decedent if there is no appointed, qualified, and acting personal representative within the United States. For provisions of the statute and regulations prescribing conditions authorizing release of the executor from his personal liability for payment of the tax, see section 313 (b) and article 67.

EXAMINATION OF RECORDS AND TAKING OF TESTIMONY

SEC. 1104 (as amended by section 618, Revenue Act of 1928). The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

SEC. 1122. (a) If any person is summoned under this Act to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(b) The district courts of the United States at the instance of the United States are hereby invested with such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction, and of ne exeat reipublica, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the provisions of this Act. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such provisions.

Sec. 507. Revenue Act of 1934.

The Commissioner, for the purpose of determining the liability at law or in equity of a transferee of the property of any person with respect to any Federal taxes imposed upon such person, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon such liability, and may require the attendance of the transferor or transferee, or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter, with power to administer oaths to such person or persons.

ART. 103. Securing evidence—Taking testimony.—In order to ascertain the correctness of a return, or to make a return if none has been made, the Commissioner has power to require the attendance, and to take the testimony, of the person rendering the return, or any officer or employee of such person, or any other person having knowledge in the premises. Such persons may be required to produce any relevant book, paper, or other record. The Commissioner also is authorized, for the purpose of determining the liability at law or in equity of a transferee of the property of any person with respect to any Federal taxes imposed upon such person, to examine any books, papers, records, or memoranda bearing upon such liability and may require the attendance of the transferor or transferee, or any officer or employee of such person and take his testimony with reference to the matter. The Commissioner has the authority to administer oaths to the persons required to testify. The power and authority herein described may be exercised by any officer or employee of the Bureau of Internal Revenue, including the field force designated by the Commissioner for that purpose. (For penalties, see article 93.)

ART. 104. Power to compel compliance.—If any person is summoned to appear and testify, or to produce books, papers, or other data, the District Court of the United States for the district in which such person resides has power to compel the giving of the testimony, the production of the books, papers, or data, and to issue any appropriate process, writ, or order.

REMEDIES FOR COLLECTION

SEC. 1100. All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act.

SEC. 311. * * * (b) Where the assessment of any tax imposed by this title or of any estate or gift tax imposed by prior Act of Congress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the executor.

SEC. 316. (a) The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this title (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) The liability, at law or in equity, of a transferee of property of a decedent or donor, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed by this title or by any prior estate tax Act or by any gift tax Act

(2) The liability of a fiduciary under section 3467 of the Revised Statutes in respect of the payment of any such tax from the estate of the decedent or donor.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the executor or donor; or

(2) If the period of limitation for assessment against the executor expired before the enactment of this Act but assessment against the executor was made within such period,—then within six years after the making of such assessment against the executor, but in no case later than one year after the enactment of this Act.

(3) If a court proceeding against the executor or donor for the collection of the tax has been begun within either of the above periods,—then within one year after return of execution in such proceeding.

(c) The running of the period of limitation upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under subdivision (a) of section 308 to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary, and for 60 days thereafter.

(d) This section shall not apply to any suit or other proceeding for the enforcement of the liability of a transferee or fiduciary pending at the time of the enactment of this Act.

(e) As used in this section the term "transferee" includes heir, legatee, devisee, and distributee.

Sec. 403. Revenue Act of 1928.

(a) Section 316 (c) of the Revenue Act of 1926 is amended to read as follows:

"(c) The running of the statute of limitations upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under subdivision (a) of section 308 to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter."

(b) Subsection (a) of this section shall apply in all cases where the period of limitation has not expired prior to the enactment of this Act.

Sec. 604. Revenue Act of 1928.

No suit shall be maintained in any court for the purpose of restraining the assessment or collection of (1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any income, war-profits, excess-profits, or estate-tax, or (2) the amount of the liability of a fiduciary under section 3467 of the Revised Statutes in respect of any such tax.

Sec. 808. Revenue Act of 1932.

(a) Section 305(b) of the Revenue Act of 1926 is amended to read as follows:

"(b) Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part * * *. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of extension, and the running of the statute of limitations for assessment and collection, as provided in sections 310 (a) and 311 (b), shall be suspended for the period of any such extension. * * *"

(b) Section 308 (i) of the Revenue Act of 1926 is amended to read as follows:

"(i) Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner, with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax), may grant an extension for the payment of such deficiency * * *. In such case the running of the statute of limitations for assessment and collection as provided in sections 310 (a) and 311 (b), shall be suspended for the period of any such extension * * *."

Sec. 403. Revenue Act of 1932.

Except as provided in section 402, the tax imposed by section 401 of this Act shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including pen-

alties), as the tax imposed by section 301 (a) of the Revenue Act of 1926, except that in the case of a resident decedent a return shall be required if the value of the gross estate at the time of the decedent's death exceeds \$50,000.

ART. 105. Remedies for collection of tax and claims against transferred assets.—Three remedies are provided for the collection of the tax:

(1) *Collection by distraint.*—The collector may issue warrant of distraint authorizing the seizure and sale of any or all of the assets of the estate. (See R. S. secs. 3187 et seq., as amended by section 1016 of the Revenue Act of 1924; U. S. C., Sup. VII, title 26, sec. 1581.)

(2) *Collection by suit to subject the property to sale.*—The collector may commence in any court of the United States appropriate proceedings, in the name of the United States, to subject the property of the decedent to sale under the judgment or decree of the court.

(3) *Collection by suit for personal liability.*—The personal liability of the executor, of the transferee or trustee of property transferred in contemplation of or intended to take effect in possession or enjoyment at or after decedent's death, and of the beneficiary of life insurance, may be enforced by any appropriate action.

(4) *Claims against transferred assets.*—The amount for which a transferee of the property of a decedent is liable, at law or in equity, and the amount of the personal liability of a fiduciary under section 3467 of the Revised Statutes, as amended (see section 518 of the Revenue Act of 1934), in respect of any estate tax imposed by Title III of the Revenue Act of 1926, or by prior Acts, whether shown on the return of the executor or determined as a deficiency in the tax, shall be assessed against such transferee or such fiduciary, as the case may be, and collected and paid, in the same manner and subject to the same provisions and limitations as in the case of a deficiency imposed by Title III of the Revenue Act of 1926, except as hereinafter provided. The provisions relating to the payment of the tax and interest, the authorization of distraint and proceedings in court for collection, the prohibition of claims for abatement and claims and suits for refund, the filing of a petition with the Board of Tax Appeals, and the filing of a petition for review of the Board's decision, are included in various sections and articles relating to deficiencies in tax imposed by Title III.

The term "transferee" as used in this article includes an heir, legatee, devisee, and distributee of an estate of a deceased person.

The period of limitation for assessment of the liability of a transferee or of a fiduciary is as follows:

(a) Within one year after the expiration of the period of limitation for assessment against the taxpayer. (See sections 308, 310, 311, 312, 318, and 1109, and article 77.)

(b) If the period of limitation for assessment against the executor expired before the enactment of the Revenue Act of 1926 but assessment against the executor was made within such period, then within six years after the making of such assessment against the executor, but in no case later than one year after the enactment of the Revenue Act of 1926.

(c) If a court proceeding against the executor for the collection of the tax has been begun within the period of limitation for the bringing of such proceeding, then within one year after the return of execution in such proceeding.

If a notice of the liability of a transferee, or the liability of a fiduciary, has been mailed to such transferee or to such fiduciary under the provisions of section 308 (a) (see article 76), then the running of the statute of limitations shall be suspended for the period in which the Commissioner is prohibited from making the assessment (and in any event, if a proceeding in respect of the liability is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

The provisions of section 316 do not apply in any suit or proceeding for the enforcement of the liability of a transferee, or a fiduciary under section 3467 of the Revised Statutes, as amended (see sec. 518 of the Revenue Act of 1934), which was pending at the time of the enactment of the Revenue Act of 1926.

The period of limitation, except in case of fraud or in case no return was filed, for collection of the tax by distraint or suit referred to in paragraphs (1), (2), and (3) of this article is six years after assessment if assessment of the tax was made within the statutory period of limitation or prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the executor. If an extension of time for payment of the tax is granted under the provisions of section 305 (b) or section 308 (i), as amended, the period within which collection by distraint or suit may be made is extended by the period of the extension granted for payment of the tax.

RECORDS, STATEMENTS, AND SPECIAL RETURNS

SEC. 1102. (a) Every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return,

render under oath such statements, or keep such records as the Commissioner deems sufficient to show whether or not such person is liable to tax.

* * * * *

(d) Any oath or affirmation required by the provisions of this Act or regulations made under authority thereof may be administered by any officer authorized to administer oaths for general purposes by the law of the United States or of any State, Territory, or possession of the United States, wherein such oath or affirmation is administered, or by any consular officer of the United States.

ART. 106. Executor's duty to keep records.—It is the duty of the executor to keep such records as the Commissioner may require. Executors are required to keep such complete and detailed records of the affairs of the estate as will enable the Commissioner to determine accurately the amount of the tax liability.

ART. 107. Executor's duty to render statements.—It is the duty of the executor not only to make the formal return, but also to render any other sworn statement which the Commissioner may require for the purpose of determining whether a tax liability exists and, if so, the extent thereof.

ESTATES ADMINISTERED IN THE UNITED STATES COURT FOR CHINA

SEC. 321. (a) The term "resident" as used in this title includes a citizen of the United States with respect to whose property any probate or administration proceedings are had in the United States Court for China. Where no part of the gross estate of such decedent is situated in the United States at the time of his death, the total amount of tax due under this title shall be paid to or collected by the clerk of such court, but where any part of the gross estate of such decedent is situated in the United States at the time of his death, the tax due under this title shall be paid to or collected by the collector of the district in which is situated the part of the gross estate in the United States, or, if such part is situated in more than one district, then the collector of such district as may be designated by the Commissioner.

(b) For the purpose of this section the clerk of the United States Court for China shall be a collector for the territorial jurisdiction of such court, and taxes shall be collected by and paid to him in the same manner and subject to the same provisions of law, including penalties, as the taxes collected by and paid to a collector in the United States.

NOTICE OF PERSONS ACTING AS FIDUCIARY

SEC. 317. (a) Upon notice to the Commissioner that any person is acting as executor, such person shall assume the powers, rights, duties, and privileges of an executor in respect of a tax imposed by this title or by any prior estate tax Act, until notice is given that such person is no longer acting as executor.

(b) Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 316, the fiduciary shall assume on behalf of such person the powers,

rights, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person), until notice is given that the fiduciary capacity has terminated.

(c) Notice under subdivision (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

(d) In the absence of any notice to the Commissioner under subdivision (a) or (b), notice under this title of a deficiency or other liability, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for the purposes of this title.

ART. 108. Notice of persons acting as fiduciary.—The “notice to the Commissioner” provided for in section 317 shall be in writing signed by the fiduciary and filed with the Commissioner, setting forth the name and address of the person for whom he is acting in a fiduciary capacity and also the nature of the liability of such person, accompanied by satisfactory evidence of his authority to act for such person in the fiduciary capacity. If the fiduciary capacity exists by order of court, a certified copy of the order of the court may be regarded as such satisfactory evidence. The written notice to the Commissioner need not be accompanied by evidence of the authority of the fiduciary to act if there is already on file with the Commissioner satisfactory evidence of the authority to act. Any such written notice which has been filed with the Commissioner since the enactment of the Revenue Act of 1926 shall be considered as sufficient notice to the Commissioner within the meaning of section 317 if and when there is or has been filed with the Commissioner the satisfactory evidence herein provided for. When the fiduciary capacity has terminated, the fiduciary, in order to be relieved of any further duty or liability as such, must file with the Commissioner written notice that the fiduciary capacity has terminated as to him, accompanied by satisfactory evidence of the termination of the fiduciary capacity. Such written notice should state the name and address of the person, if any, who has been substituted as fiduciary.

This article, made under the provisions of section 317 of the Revenue Act of 1926, shall not be taken to abridge in any way the powers and duties of fiduciaries provided for in other sections of Title III of the Act or in any prior estate tax Act.

SCOPE OF REPEAL

SEC. 1200. (a) The following parts of the Revenue Act of 1924 are repealed, to take effect (except as otherwise provided in this Act) upon the enactment of this Act, subject to the limitations provided in subdivision (b) :

*	*	*	*	*	*	*
Part I of Title III (called “Estate Tax”);						
*	*	*	*	*	*	*

Sections 1004, 1005, 1006, and 1007, subdivision (a) of section 1008, sections 1009, 1010, 1011, 1012, 1014, 1018, 1019, and 1020, subdivisions (a) and (b) of section 1021, subdivision (c) of section 1025, and sections 1026, 1027, 1028, 1029, 1030, and 1031 (being certain administrative provisions).

(b) The parts of the Revenue Act of 1924 which are repealed by this Act shall (except as provided in sections 283 and 318 and except as otherwise specifically provided in this Act), remain in force for the assessment and collection of all taxes imposed by such Act, and for the assessment, imposition, and collection of all interest, penalties, or forfeitures which have accrued or may accrue in relation to any such taxes and for the assessment and collection, to the extent provided in the Revenue Act of 1924, of all taxes imposed by prior income, war profits, or excess profits tax acts, and for the assessment, imposition, and collection of all interest, penalties, or forfeitures which have accrued or may accrue in relation to any such taxes. In the case of any tax imposed by any part of the Revenue Act of 1924 repealed by this Act, if there is a tax imposed by this Act in lieu thereof, the provision imposing such tax shall remain in force until the corresponding tax under this Act takes effect under the provisions of this Act.

SEC. 714. Revenue Act of 1928.

The parts of the Revenue Act of 1926 which are repealed by this Act shall remain in force for the assessment and collection of all taxes imposed thereby and for the assessment, imposition, and collection of all interest, penalties, or forfeitures which have accrued or may accrue in relation to any such taxes.

ART. 109. Scope of repeal.—The Revenue Act of 1926 retains in force (except as provided in section 318) the provisions of Part I, Title III, of the Revenue Act of 1924, and the provisions of estate tax titles of all prior Acts, for the assessment and collection of all taxes accruing thereunder and for the imposition and collection of all penalties which have accrued or may accrue in relation to any such taxes. The Revenue Act of 1928 to the same extent, and for the same purpose, retains in force the parts of the Revenue Act of 1926 repealed by the Revenue Act of 1928.

RULES AND REGULATIONS

SEC. 1101. The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this Act.

SEC. 506. Revenue Act of 1934.

Section 1108(a) of the Revenue Act of 1926, as amended, is amended to read as follows:

“(a) The Secretary, or the Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the internal revenue laws, shall be applied without retroactive effect.”

ART. 110. Promulgation of regulations.—In pursuance of the statute, the foregoing regulations are hereby made and promulgated. The

regulations relating to the provisions of law (including penalties) as to assessment, collection, and payment of the tax imposed by Title III of the Revenue Act of 1926 apply to the additional estate tax imposed by Title II of the Revenue Act of 1932 and the tax imposed by the Revenue Act of 1932 as amended by the Revenue Act of 1934. The regulations also apply to all pending estate tax cases unless a particular question is governed by a specific provision of the earlier statutes differing from the Revenue Act of 1926, as amended and supplemented by the Revenue Act of 1928, the Revenue Act of 1932, and the Revenue Act of 1934, in which case the provisions of the applicable statute control, and Regulations 37 (revised January, 1921), Regulations 63, Regulations 68, and Regulations 70 (1929 Edition), as amended by Treasury Decisions relating thereto, to that extent remain in full force and effect.

WRIGHT MATTHEWS,

Acting Commissioner of Internal Revenue.

Approved November 7, 1934.

T. J. COOLIDGE,

Acting Secretary of the Treasury.

APPENDIX

REVENUE ACT OF 1926

(As originally enacted, with references to pages showing amendments)

TITLE III.—ESTATE TAX

SEC. 300. When used in this title—

(a) The term “executor” means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent;

(b) The term “net estate” means the net estate as determined under the provisions of section 303;

(c) The term “month” means calendar month; and

(d) The term “collector” means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner.

SEC. 301. (a) In lieu of the tax imposed by Title III of the Revenue Act of 1924, a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 303) is hereby imposed upon the transfer of the net estate of every decedent dying after the enactment of this act, whether a resident or nonresident of the United States;

1 per centum of the amount of the net estate not in excess of \$50,000;

2 per centum of the amount by which the net estate exceeds \$50,000 and does not exceed \$100,000;

3 per centum of the amount by which the net estate exceeds \$100,000 and does not exceed \$200,000;

4 per centum of the amount by which the net estate exceeds \$200,000 and does not exceed \$400,000;

5 per centum of the amount by which the net estate exceeds \$400,000 and does not exceed \$600,000;

6 per centum of the amount by which the net estate exceeds \$600,000 and does not exceed \$800,000;

7 per centum of the amount by which the net estate exceeds \$800,000 and does not exceed \$1,000,000;

8 per centum of the amount by which the net estate exceeds \$1,000,000 and does not exceed \$1,500,000;

9 per centum of the amount by which the net estate exceeds \$1,500,000 and does not exceed \$2,000,000;

10 per centum of the amount by which the net estate exceeds \$2,000,000 and does not exceed \$2,500,000;

11 per centum of the amount by which the net estate exceeds \$2,500,000 and does not exceed \$3,000,000;

12 per centum of the amount by which the net estate exceeds \$3,000,000 and does not exceed \$3,500,000;

13 per centum of the amount by which the net estate exceeds \$3,500,000 and does not exceed \$4,000,000;

14 per centum of the amount by which the net estate exceeds \$4,000,000 and does not exceed \$5,000,000;

15 per centum of the amount by which the net estate exceeds \$5,000,000 and does not exceed \$6,000,000;

16 per centum of the amount by which the net estate exceeds \$6,000,000 and does not exceed \$7,000,000;

17 per centum of the amount by which the net estate exceeds \$7,000,000 and does not exceed \$8,000,000;

18 per centum of the amount by which the net estate exceeds \$8,000,000 and does not exceed \$9,000,000;

19 per centum of the amount by which the net estate exceeds \$9,000,000 and does not exceed \$10,000,000;

20 per centum of the amount by which the net estate exceeds \$10,000,000.¹

(b) The tax imposed by this section shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate. The credit allowed by this subdivision shall not exceed 80 per centum of the tax imposed by this section, and shall include only such taxes as were actually paid and credit therefor claimed within three years after the filing of the return required by section 304.²

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—³

(a) To the extent of the interest therein of the decedent at the time of his death;

(b) To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower, curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy;

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Where within two years prior to his death but after the enactment of this Act and without such a consideration the decedent has made a transfer or transfers, by trust or otherwise, of any of his property, or an interest therein, not admitted or shown to have been made in contemplation of or intended to take effect in possession or enjoyment at or after his death, and the value or aggregate value, at the time of such death, of the property or interest so transferred to any one person is in excess of \$5,000, then, to the extent of such excess, such transfer or transfers shall be deemed and held to have been made in contemplation of death within the meaning of this title. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death but prior to the enactment of this Act, without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;⁴

(d) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power,

¹ See pages 2, 4, 17.

² See pages 17, 18, 19.

³ See page 24.

⁴ See page 37.

either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. The relinquishment of any such power, not admitted or shown to have been in contemplation of the decedent's death, made within two years prior to his death but after the enactment of this Act without such a consideration and affecting the interest or interests (whether arising from one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggregate value, at the time of such death, in excess of \$5,000, then, to the extent of such excess, such relinquishment or relinquishments shall be deemed and held to have been made in contemplation of death within the meaning of this title;¹

(e) To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: *Provided*, That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further*, That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants;

(f) To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth; and²

(g) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over \$40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life.

(h) Except as otherwise specifically provided therein subdivisions (b), (c), (d), (e), (f), and (g) of this section shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after the enactment of this Act.

(i) If any one of the transfers, trusts, interests, rights, or powers, enumerated and described in subdivisions (c), (d), and (f) of this section is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

¹ See page 38.

² See page 47.

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—¹

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages upon, or any indebtedness in respect to, property (except, in the case of a resident decedent, where such property is not situated in the United States), to the extent that such claims, mortgages, or indebtedness were incurred or contracted bona fide and for an adequate and full consideration in money or money's worth, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, or from theft, when such losses are not compensated for by insurance or otherwise, and such amounts reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or any estate, succession, legacy, or inheritance taxes;²

(2) An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from such donor by gift or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under the Revenue Act of 1924, or an estate tax imposed under this or any prior Act of Congress was paid by or on behalf of the donor or the estate of such prior decedent as the case may be, and only in the amount of the value placed by the Commissioner on such property in determining the value of the gift or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate and not deducted under paragraph (1) or (3) of this subdivision;³

(3) The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate; and⁴

(4) An exemption of \$100,000.⁵

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—⁶

¹ See page 52.

² See page 51.
⁵ See page 67.

³ See page 57.

⁶ See page 71.

⁴ See page 64.

(1) That proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated, but in no case shall the amount so deducted exceed 10 per centum of the value of that part of his gross estate which at the time of his death is situated in the United States;¹

(2) An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from such donor by gift or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under the Revenue Act of 1924, or an estate tax imposed under this or any prior Act of Congress was paid by or on behalf of the donor or the estate of such prior decedent as the case may be, and only in the amount of the value placed by the Commissioner on such property in determining the value of the gift or the gross estate of such prior decedent, and only to the extent that the value of such property is included in that part of the decedent's gross estate which at the time of his death is situated in the United States and not deducted under paragraph (1) or (3) of this subdivision; and ¹

(3) The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used within the United States by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.¹

(c) No deduction shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section 304 the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States.²

(d) For the purpose of this title, stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States, and any property of which the decedent has made a transfer, by trust or otherwise, within the meaning of subdivision (c) or (d) of section 302, shall be deemed to be situated in the United States, if so situated either at the time of the transfer, or at the time of the decedent's death.³

(e) The amount receivable as insurance upon the life of a nonresident decedent, and any moneys deposited with any person carrying on the banking business, by or for a nonresident decedent who was not engaged in business in the United States at the time of his death, shall not, for the purpose of this title, be deemed property within the United States.⁴

(f) Missionaries duly commissioned and serving under boards of foreign missions of the various religious denominations in the United States, dying while

¹ See page 70.

² See page 71

³ See pages 27, 68.

⁴ See page 68.

in the foreign missionary service of such boards, shall not, by reason merely of their intention to permanently remain in such foreign service, be deemed non-residents of the United States, but shall be presumed to be residents of the State, the District of Columbia, or the Territories of Alaska or Hawaii wherein they respectively resided at the time of their commission and their departure for such foreign service.

SEC. 304. (a) The executor, within two months after the decedent's death, or within a like period after qualifying as such, shall give written notice thereof to the collector. The executor shall also, at such times and in such manner as may be required by regulations made pursuant to law, file with the collector a return under oath in duplicate, setting forth (1) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident, of that part of his gross estate situated in the United States; (2) the deductions allowed under section 303; (3) the value of the net estate of the decedent as defined in section 303; and (4) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.¹

(b) Return shall be made in all cases where the gross estate at the death of the decedent exceeds \$100,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate.²

SEC. 305. (a) The tax imposed by this title shall be due and payable one year after the decedent's death, and shall be paid by the executor to the collector.

(b) Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part not to exceed five years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

(c) If the time for the payment is thus extended there shall be collected, as a part of such amount, interest thereon at the rate of 6 per centum per annum from the expiration of six months after the due date of the tax to the date of the expiration of the period of the extension.³

(d) The time for which the Commissioner may extend the time for payment of the estate tax imposed by Title IV of the Revenue Act of 1921 shall be five years.

SEC. 306. As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax.

SEC. 307. As used in this title in respect of a tax imposed by this title the term "deficiency" means—

(1) The amount by which the tax imposed by this title exceeds the amount shown as the tax by the executor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the executor upon his return, or if no return is made by the executor, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assess-

¹ See page 78.

² See page 74.

³ See pages 101, 102.

ment, shall first be decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax.

Sec. 308. (a) If the Commissioner determines that there is a deficiency in respect of the tax imposed by this title, the Commissioner is authorized to send notice of such deficiency to the executor by registered mail. Within 60 days after such notice is mailed (not counting Sunday as the sixtieth day), the executor may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. Except as otherwise provided in subdivision (d) or (f) of this section or in section 312 or 1001, no assessment of a deficiency in respect of the tax imposed by this title and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the executor, nor until the expiration of such 60-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3224 of the Revised Statutes the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court.¹

(b) If the executor files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the decision of the Board which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

(c) If the executor does not file a petition with the Board within the time prescribed in subdivision (a) of this section, the deficiency, notice of which has been mailed to the executor, shall be assessed, and shall be paid upon notice and demand from the collector.

(d) The executor shall at any time have the right, by a signed notice in writing filed with the Commissioner, to waive the restrictions provided in subdivision (a) of this section on the assessment and collection of the whole or any part of the deficiency.

(e) The Board shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the executor, and to determine whether any additional amount or addition to the tax should be assessed, if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) If after the enactment of this Act the Commissioner has mailed to the executor notice of a deficiency as provided in subdivision (a), and the executor files a petition with the Board within the time prescribed in such subdivision, the Commissioner shall have no right to determine any additional deficiency, except in the case of fraud, and except as provided in subdivision (e) of this section or in subdivision (c) of section 312. If the executor is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered, for the purposes of this subdivision or of subdivision (a) of this section, or of section 319, as a notice of a deficiency, and the executor shall have no right to file a petition with the Board of Tax Appeals based on such notice, nor shall such assessment or collection be prohibited by the provisions of subdivision (a) of this section.

¹ See page 86.

(g) For the purposes of this title the date on which a decision of the Board becomes final shall be determined according to the provisions of section 1005.

(h) Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the due date of the tax to the date the deficiency is assessed, or, in the case of a waiver under subdivision (d) of this section, to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier.

(i) Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax) may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of two years. If an extension is granted, the Commissioner may require the executor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties, as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. In such case there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. If the part of the deficiency the time for payment of which is so extended is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 1 per centum a month for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period.¹

(j) The 50 per centum addition to the tax provided by section 3176 of the Revised Statutes, as amended, shall, when assessed after the enactment of this Act in connection with an estate tax, be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of subdivision (h) of this section shall not be applicable.

Sec. 309. (a) (1) Where the amount determined by the executor as the tax imposed by this title, or any part of such amount, is not paid on the due date of the tax, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 1 per centum a month from the due date until it is paid.

(2) Where an extension of time for payment of the amount so determined as the tax by the executor has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under subdivision (c) of section 305, is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subdivision, interest at the rate of 1 per centum a month shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) Where a deficiency, or any interest assessed in connection therewith under subdivision (h) of section 308, or any addition to the tax provided for in section 3176 of the Revised Statutes, as amended, is not paid in full within 30 days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at

¹ See page 101.

the rate of 1 per centum a month from the date of such notice and demand until it is paid.

(c) If a bond is filed, as provided in section 312, the provisions of subdivision (b) of this section shall not apply to the amount covered by the bond.

SEC. 310. (a) Except as provided in section 311, the amount of the estate taxes imposed by this title shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of three years after the return was filed.

(b) The running of the statute of limitations provided in this section or in section 311 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under subdivision (a) of section 308) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court, and for 60 days thereafter.¹

SEC. 311. (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(b) Where the assessment of any tax imposed by this title or of any estate or gift tax imposed by prior Act of Congress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the executor.

(c) This section shall not bar a distraint or proceeding in court begun before the enactment of the Revenue Act of 1924; nor shall it authorize the assessment of a tax or the collection thereof by distraint or by proceeding in court (1) if at the time of the enactment of this Act such assessment, distraint, or proceeding was barred by the statutory period of limitation properly applicable thereto, unless prior to the enactment of this Act the Commissioner and the executor agreed in writing thereto, or (2) contrary to the provisions of subdivision (a) of section 308 of this Act.

SEC. 312. (a) If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall immediately assess such deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) and notice and demand shall be made by the collector for the payment thereof.

(b) If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under subdivision (a) of section 308, then the Commissioner shall mail a notice under such subdivision within 60 days after the making of the assessment.

(c) The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the executor, despite the provisions of subdivision (f) of section 308 and whether or not the executor has theretofore filed a petition with the Board of Tax Appeals. The Commissioner shall notify the Board of the amount of such assessment, if the petition

¹ See page 96.

is filed with the Board before the making of the assessment or is subsequently filed, and the Board shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) If the jeopardy assessment is made after the decision of the Board is rendered such assessment may be made only in respect of the deficiency determined by the Board in its decision.

(e) A jeopardy assessment may not be made after the decision of the Board has become final or after the executor has filed a petition for review of the decision of the Board.

(f) When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in subdivision (j) of this section.

(g) If the bond is given before the executor has filed his petition with the Board under subdivision (a) of section 308, the bond shall contain a further condition that if a petition is not filed within the period provided in such subdivision, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision.

(h) Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The executor shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the executor, be proportionately reduced. If the Board determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Board is rendered the bond shall, at the request of the executor, be proportionately reduced.

(i) When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

(j) In the case of the amount collected under subdivision (i) there shall be collected at the same time as such amount, and as a part of the tax, interest at the rate of 6 per centum per annum upon such amount from the date of the jeopardy notice and demand to the date of notice and demand under subdivision (i) of this section, or, in the case of the amount collected in excess of the amount of the jeopardy assessment, interest as provided in subdivision

(h) of section 308. If the amount included in the notice and demand from the collector under subdivision (i) of this section is not paid in full within 30 days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 1 per centum a month from the date of such notice and demand until it is paid.

(k) No claim in abatement shall be filed in respect of any assessment made after the enactment of this Act in respect of any estate or gift tax.

SEC. 313. (a) The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

(b) If the executor makes written application to the Commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Commissioner (as soon as possible, and in any event within one year after the making of such application, or, if the application is made before the return is filed, then within one year after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in section 310) shall notify the executor of the amount of the tax. The executor, upon payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

(c) The provisions of subdivision (b) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless the title to such part of the gross estate has passed to a bona fide purchaser for value, in which case such part shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

SEC. 314. (a) If the tax herein imposed is not paid on or before the due date thereof the collector shall, upon instruction from the Commissioner, proceed to collect the tax under the provisions of general law, or commence appropriate proceedings in any court of the United States having jurisdiction, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. This subdivision in so far as it applies to the collection of a deficiency shall be subject to the provisions of section 308.

(b) If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution. If any part of the gross estate consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds, in

excess of \$40,000, of such policies bear to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio.

SEC. 315. (a) Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

(b) If (1) the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth) or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.¹

SEC. 316. (a) The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this title (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) The liability, at law or in equity, of a transferee of property of a decedent or donor, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed by this title or by any prior estate tax Act or by any gift tax Act.

(2) The liability of a fiduciary under section 3467 of the Revised Statutes in respect of the payment of any such tax from the estate of the decedent or donor.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the executor or donor; or

(2) If the period of limitation for assessment against the executor expired before the enactment of this Act but assessment against the executor was made within such period,—then within six years after the making of such assessment against the executor, but in no case later than one year after the enactment of this Act.

¹ See page 114.

(3) If a court proceeding against the executor or donor for the collection of the tax has been begun within either of the above periods,—then within one year after return of execution in such proceeding.

(c) The running of the period of limitation upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under subdivision (a) of section 308 to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary, and for 60 days thereafter.¹

(d) This section shall not apply to any suit or other proceeding for the enforcement of the liability of a transferee or fiduciary pending at the time of the enactment of this Act.

(e) As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee.

SEC. 317. (a) Upon notice to the Commissioner that any person is acting as executor, such person shall assume the powers, rights, duties, and privileges of an executor in respect of a tax imposed by this title or by any prior estate tax Act, until notice is given that such person is no longer acting as executor.

(b) Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 316, the fiduciary shall assume on behalf of such person the powers, rights, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person), until notice is given that the fiduciary capacity has terminated.

(c) Notice under subdivision (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

(d) In the absence of any notice to the Commissioner under subdivision (a) or (b), notice under this title of a deficiency or other liability, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for the purposes of this title.

SEC. 318. (a) If after the enactment of this Act the Commissioner determines that any assessment should be made in respect of any estate or gift tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or by any such Act as amended, the Commissioner is authorized to send by registered mail to the person liable for such tax notice of the amount proposed to be assessed, which notice shall, for the purposes of this Act, be considered a notice under subdivision (a) of section 308 of this Act. In the case of any such determination the amount which should be assessed (whether as deficiency or additional tax or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in case of delinquency in payment after notice and demand and the provisions prohibiting claims and suits for refund) as in the case of a deficiency in the tax imposed by this title, except that in the case of an estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, the period of limitation prescribed in section 1109 of this Act shall be applied in lieu of the period prescribed in subdivision (a) of section 310.

(b) If before the enactment of this Act any person has appealed to the Board of Tax Appeals under subdivision (a) of section 308 of the Revenue Act of 1924 (if such appeal relates to a tax imposed by Title III of such Act

¹ See page 136.

or to so much of an estate tax imposed by any of the prior Acts enumerated in subdivision (a) of this section as was not assessed before June 3, 1924), and the appeal is pending before the Board at the time of the enactment of this Act, the Board shall have jurisdiction of the appeal. In all such cases the powers, duties, rights, and privileges of the Commissioner and of the person who has brought the appeal, and the jurisdiction of the Board and of the courts, shall be determined, and the computation of the tax shall be made, in the same manner as provided in subdivision (a) of this section, except as provided in subdivision (h) of this section and except that the person liable for the tax shall not be subject to the provisions of subdivision (a) of section 319.

(c) If before the enactment of this Act the Commissioner has mailed to any person a notice under subdivision (a) of section 308 of the Revenue Act of 1924 (whether in respect of a tax imposed by Title III of such Act or in respect of so much of an estate tax imposed by any of the prior Acts enumerated in subdivision (a) of this section as was not assessed before June 3, 1924), and if the 60-day period referred to in such subdivision has not expired before the enactment of this Act and no appeal has been filed before the enactment of this Act, such person may file a petition with the Board in the same manner as if a notice of deficiency had been mailed after the enactment of this Act in respect of a deficiency in a tax imposed by this title. In such cases the 60-day period referred to in subdivision (a) of section 308 of this Act shall begin on the date of the enactment of this Act, and the powers, duties, rights, and privileges of the Commissioner and of the person entitled to file the petition, and the jurisdiction of the Board and of the courts, shall, whether or not the petition is filed, be determined, and the computation of the tax shall be made, in the same manner as provided in subdivision (a) of this section.

(d) If any deficiency in any estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, was assessed before June 3, 1924, but was not paid in full before the date of the enactment of this Act, and if the Commissioner, after the enactment of this Act, finally determines the amount of the deficiency, he is authorized to send by registered mail to the person liable for such tax notice of such deficiency, which notice shall, for the purposes of this Act, be considered a notice under subdivision (a) of section 308 of this Act. In the case of any such final determination the amount of the tax (whether as deficiency or additional tax or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in cases of delinquency in payment after notice and demand, and the provisions relating to claims and suits for refund) as in the case of a deficiency in the tax imposed by this title, except as otherwise provided in subdivision (g) of this section, and except that the period of limitation prescribed in section 1109 of this Act shall be applied in lieu of the period prescribed in subdivision (a) of section 310.

(e) If any deficiency in any estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, was assessed before June 3, 1924, but was not paid in full before that date, and if the Commissioner after June 2, 1924, but before the enactment of this Act, finally determined the amount of the deficiency, and if the person liable for such tax appealed before the enactment of this Act to the Board of Tax Appeals and the appeal is pending before the Board at the time of the enactment of this Act, the Board shall have jurisdiction of the

appeal. In all such cases the powers, duties, rights, and privileges of the Commissioner and of the person who has brought the appeal, and the jurisdiction of the Board and of the courts, shall be determined, and the computation of the tax shall be made, in the same manner as provided in subdivision (d) of this section, except as provided in subdivision (h) of this section and except that the person liable for the tax shall not be subject to the provisions of subdivision (a) of section 319.

(f) If any deficiency in any estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, was assessed before June 3, 1924, but was not paid in full before the date of the enactment of this Act, and if the Commissioner after June 2, 1924, finally determined the amount of the deficiency, and notified the person liable for such tax to that effect less than 60 days prior to the enactment of this Act and no appeal has been filed before the enactment of this Act, the person so notified may file a petition with the Board in the same manner as if a notice of deficiency had been mailed after the enactment of this Act in respect of a deficiency in a tax imposed by this title. In such cases the 60-day period referred to in subdivision (a) of section 308 of this Act shall begin on the date of the enactment of this Act, and, whether or not the petition is filed, the powers, duties, rights, and privileges of the Commissioner and of the person who is so notified, and the jurisdiction of the Board and of the courts, shall be determined, and the computation of the tax be made, in the same manner as provided in subdivision (d) of this section.

(g) In cases within the scope of subdivision (d), (e), or (f), if the Commissioner believes that the collection of the deficiency will be jeopardized by delay, he may, despite the provisions of subdivision (a) of section 308 of this Act, instruct the collector to proceed to enforce the payment of the unpaid portion of the deficiency, and notice and demand shall be made by the collector for the payment thereof. Within 30 days after such jeopardy notice and demand the person liable for the tax may obtain a stay of collection of the whole or any part of the amount included in the notice and demand by filing with the collector a bond in like manner, under the same conditions, and with the same effect, as in the case of a bond to stay the collection of a jeopardy assessment under section 312 of this Act.

(h) In cases within the scope of subdivision (b) or (e) of this section where any hearing before the Board has been held before the enactment of this Act and the decision is rendered after the enactment of this Act, such decision shall, for the purposes of this title, be considered to have become final upon the date when it is rendered and neither party shall have any right to petition for a review of the decision. The Commissioner may, within one year from the time the decision is rendered, begin a proceeding in court for the collection of any part of the amount disallowed by the Board, unless the statutory period of limitations properly applicable thereto has expired before the appeal was taken to the Board. The court shall include in its judgment interest upon the amount thereof in the same cases, at the same rate, and for the same period, as if such amount were collected otherwise than by proceeding in court. In any such proceeding by the Commissioner or in any suit by the taxpayer for a refund, the findings of the Board shall be prima facie evidence of the facts therein stated.

(i) Where before the enactment of this Act a jeopardy assessment has been made under subdivision (d) of section 308 of the Revenue Act of 1924 (whether of a deficiency in the tax imposed by Title III of such Act or of a deficiency in an estate tax imposed by any of the prior Acts enumerated in subdivision (a)

of this section) all proceedings after the enactment of this Act shall be the same as under the Revenue Act of 1924 as amended by this Act, except that—

(1) A decision of the Board rendered after the enactment of this Act where no hearing has been held by the Board before the enactment of this Act may be reviewed in the same manner as provided in this Act in the case of a tax imposed by this title;

(2) Where no hearing has been held by the Board before the enactment of this Act, the Commissioner shall have no right to begin a proceeding in court for the collection of any part of the deficiency disallowed by the Board; and

(3) In the consideration of the case the jurisdiction and powers of the Board shall be the same as provided in this Act in the case of a tax imposed by this title.

(j) In the case of any estate or gift tax imposed by prior Act of Congress, in computing the period of limitations provided in section 310 or 311 of this Act on the making of assessments and the beginning of distraint or a proceeding in court, the running of the statute of limitations shall be considered to have been suspended (in addition to the period of suspension provided for in subdivision (b) of section 310) for any period prior to the enactment of this Act during which the Commissioner was prohibited from making the assessment or beginning distraint or proceeding in court.

SEC. 319. (a) If the Commissioner has mailed to the executor a notice of deficiency under subdivision (a) of section 308 and if the executor after the enactment of this Act files a petition with the Board of Tax Appeals within the time prescribed in such subdivision, no refund in respect of the tax shall be allowed or made and no suit for the recovery of any part of such tax shall be instituted in any court, except—

(1) As provided in subdivision (c) of this section or in subdivision (i) of section 312 or in subdivision (b), (e), or (g) of section 318 or in subdivision (d) of section 1001; and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the Board which has become final; and

(3) As to any amount collected after the statutory period of limitations upon the beginning of distraint or a proceeding in court for collection has expired; but in any such claim for refund or in any such suit for refund the decision of the Board which has become final, as to whether such period had expired before the notice of deficiency was mailed, shall be conclusive.

(b) All claims for the refunding of the tax imposed by this title alleged to have been erroneously or illegally assessed or collected must be presented to the Commissioner within three years next after the payment of such tax.¹

(c) If the Board finds that there is no deficiency and further finds that the executor has made an overpayment of tax, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Board has become final, be credited or refunded to the executor as provided in section 3220 of the Revised Statutes, as amended. Such refund shall be made either (1) if claim therefor was filed within the period of limitation provided for by law, or (2) if the petition was filed with the Board within four years after the tax was paid, or, in the case of a tax imposed by this title, within three years after the tax was paid.¹

SEC. 320. (a) Whoever knowingly makes any false statement in any notice or return required to be filed under this title shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both.

¹ See page 124.

(b) Whoever fails to comply with any duty imposed upon him by section 304, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Commissioner or any collector or law officer of the United States or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this title, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

SEC. 321. (a) The term "resident" as used in this title includes a citizen of the United States with respect to whose property any probate or administration proceedings are had in the United States Court for China. Where no part of the gross estate of such decedent is situated in the United States at the time of his death, the total amount of tax due under this title shall be paid to or collected by the clerk of such court, but where any part of the gross estate of such decedent is situated in the United States at the time of his death, the tax due under this title shall be paid to or collected by the collector of the district in which is situated the part of the gross estate in the United States, or, if such part is situated in more than one district, then the collector of such district as may be designated by the Commissioner.

(b) For the purpose of this section the clerk of the United States Court for China shall be a collector for the territorial jurisdiction of such court, and taxes shall be collected by and paid to him in the same manner and subject to the same provisions of law, including penalties, as the taxes collected by and paid to a collector in the United States.

SEC. 322. (a) Subdivision (a) of section 301 of the Revenue Act of 1924 is amended to read as follows:

"SEC. 301. (a) In lieu of the tax imposed by Title IV of the Revenue Act of 1921, a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 303) is hereby imposed upon the transfer of the net estate of every decedent dying after the enactment of this Act, whether a resident or nonresident of the United States:

"1 per centum of the amount of the net estate not in excess of \$50,000;

"2 per centum of the amount by which the net estate exceeds \$50,000 and does not exceed \$150,000;

"3 per centum of the amount by which the net estate exceeds \$150,000 and does not exceed \$250,000;

"4 per centum of the amount by which the net estate exceeds \$250,000 and does not exceed \$450,000;

"6 per centum of the amount by which the net estate exceeds \$450,000 and does not exceed \$750,000;

"8 per centum of the amount by which the net estate exceeds \$750,000 and does not exceed \$1,000,000;

"10 per centum of the amount by which the net estate exceeds \$1,000,000 and does not exceed \$1,500,000;

"12 per centum of the amount by which the net estate exceeds \$1,500,000 and does not exceed \$2,000,000;

"14 per centum of the amount by which the net estate exceeds \$2,000,000 and does not exceed \$3,000,000;

"16 per centum of the amount by which the net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

"18 per centum of the amount by which the net estate exceeds \$4,000,000 and does not exceed \$5,000,000;

"20 per centum of the amount by which the net estate exceeds \$5,000,000 and does not exceed \$8,000,000;

"22 per centum of the amount by which the net estate exceeds \$8,000,000 and does not exceed \$10,000,000; and

"25 per centum of the amount by which the net estate exceeds \$10,000,000."

(b) Subdivision (a) of this section shall take effect as of June 2, 1924.

SEC. 323. (a) So much of paragraph (3) of subdivision (a) and of paragraph (3) of subdivision (b) of section 303 of the Revenue Act of 1924 as reads as follows: "If the tax imposed by section 301, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes" is repealed.

(b) Subdivision (a) of this section shall take effect as of June 2, 1924.

TITLE XI.—GENERAL ADMINISTRATIVE PROVISIONS

LAWS MADE APPLICABLE

SEC. 1100. All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act.

RULES AND REGULATIONS

SEC. 1101. The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this Act.

RECORDS, STATEMENTS, AND SPECIAL RETURNS

SEC. 1102. (a) Every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as the Commissioner deems sufficient to show whether or not such person is liable to tax.

(c) The Commissioner, with the approval of the Secretary, may by regulation prescribe that any return required by any internal revenue law (except returns required under income or estate tax laws) to be under oath may, if the amount of the tax covered thereby is not in excess of \$10, be signed or acknowledged before two witnesses instead of under oath.

(d) Any oath or affirmation required by the provisions of this Act or regulations made under authority thereof may be administered by any officer authorized to administer oaths for general purposes by the law of the United States or of any State, Territory, or possession of the United States, wherein such oath or affirmation is administered, or by any consular officer of the United States.

SEC. 1103. Section 3176 of the Revised Statutes, as amended, is amended to read as follows:

"SEC. 3176. If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made

under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner of Internal Revenue may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be *prima facie* good and sufficient for all legal purposes.

"If the failure to file a return (other than a return under Title II of the Revenue Act of 1924 or Title II of the Revenue Act of 1926) or a list is due to sickness or absence, the collector may allow such further time, not exceeding 30 days, for making and filing the return or list as he deems proper.¹

"The Commissioner of Internal Revenue shall determine and assess all taxes, other than stamp taxes, as to which returns or lists are so made under the provisions of this section. In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 per centum of its amount.

"The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax."

EXAMINATION OF BOOKS AND WITNESSES

SEC. 1104. The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

UNNECESSARY EXAMINATIONS

SEC. 1105. No taxpayer shall be subjected to unnecessary examinations or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the Commissioner, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.

FINAL DETERMINATIONS AND ASSESSMENTS

SEC. 1106. (a) The bar of the statute of limitations against the United States in respect of any internal-revenue tax shall not only operate to bar

¹ See page 82.

the remedy but shall extinguish the liability; but no credit or refund in respect of such tax shall be allowed unless the taxpayer has overpaid the tax. The bar of the statute of limitations against the taxpayer in respect of any internal-revenue tax shall not only operate to bar the remedy but shall extinguish the liability; but no collection in respect of such tax shall be made unless the taxpayer has underpaid the tax.¹

(b) If after a determination and assessment in any case the taxpayer has paid in whole any tax or penalty, or accepted any abatement, credit, or refund based on such determination and assessment, and an agreement is made in writing between the taxpayer and the Commissioner, with the approval of the Secretary, that such determination and assessment shall be final and conclusive, then (except upon a showing of fraud or malfeasance or misrepresentation of fact materially affecting the determination or assessment thus made) (1) the case shall not be reopened or the determination and assessment modified by any officer, employee, or agent of the United States, and (2) no suit, action, or proceeding to annul, modify, or set aside such determination or assessment shall be entertained by any court of the United States.²

ADMINISTRATIVE REVIEW

SEC. 1107. In the absence of fraud or mistake in mathematical calculation, the findings of facts in and the decision of the Commissioner upon (or in case the Secretary is authorized to approve the same, then after such approval) the merits of any claim presented under or authorized by the internal-revenue laws shall not, except as provided in Title IX of the Revenue Act of 1924, as amended, be subject to review by any other administrative or accounting officer, employee, or agent of the United States.

RETROACTIVE REGULATIONS

SEC. 1108. (a) In case a regulation or Treasury decision relating to the internal-revenue laws, made by the Commissioner or the Secretary, or by the Commissioner with the approval of the Secretary, is reversed by a subsequent regulation or Treasury decision, and such reversal is not immediately occasioned or required by a decision of a court of competent jurisdiction, such subsequent regulation or Treasury decision may, in the discretion of the Commissioner, with the approval of the Secretary, be applied without retroactive effect.³

LIMITATION ON ASSESSMENTS AND SUITS BY THE UNITED STATES

SEC. 1109. (a) Except as provided in sections 277, 278, 310, and 311—⁴

(1) Notwithstanding the provisions of section 3182 of the Revised Statutes or any other provision of law, all internal-revenue taxes shall (except as provided in paragraph (2) or (3) of this subdivision) be assessed within four years after such taxes became due, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of five years after such taxes became due.

(2) In case of a false or fraudulent return with intent to evade tax, of a failure to file a return within the time required by law, or of a willful attempt in any manner to defeat or evade tax, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(3) Where the assessment of any tax imposed by this Act or by prior Act of Congress has been made (whether before or after the enactment of this

¹ See page 127.

² See page 125.

³ See page 141.

⁴ See page 95.

Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (A) within six years after the assessment of the tax, or (B) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer.

(b) This section shall not bar a distraint or proceeding in court begun before the enactment of the Revenue Act of 1924; nor shall it authorize the assessment of a tax or the collection thereof by distraint or by proceeding in court if at the time of the enactment of this Act such assessment, distraint, or proceeding was barred by the statutory period of limitation properly applicable thereto, unless prior to the enactment of this Act the Commissioner and the taxpayer agreed in writing thereto.

LIMITATION ON PROSECUTIONS BY THE UNITED STATES

SEC. 1110. (a) The Act entitled "An Act to limit the time within which prosecutions may be instituted against persons charged with violating internal-revenue laws," approved July 5, 1884, as amended, is reenacted without change, as follows:

"That no person shall be prosecuted, tried, or punished for any of the various offenses arising under the internal revenue laws of the United States unless the indictment is found or the information instituted within three years next after the commission of the offense: *Provided*, That for offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner, the period of limitation shall be six years, but this proviso shall not apply to acts, offenses, or transactions which were barred by law at the time of the enactment of the Revenue Act of 1924: *Provided further*, That the time during which the person committing the offense is absent from the district wherein the same is committed shall not be taken as any part of the time limited by law for the commencement of such proceedings: *Provided further*, That the provisions of this Act shall not apply to offenses committed prior to its passage: *Provided further*, That where a complaint shall be instituted before a commissioner of the United States within the period above limited, the time shall be extended until the discharge of the grand jury at its next session within the district: *And provided further*, That this Act shall not apply to offenses committed by officers of the United States."

(b) Any prosecution or proceeding under an indictment found or information instituted prior to the enactment of the Revenue Act of 1921 shall not be affected in any manner by this section, nor by the amendment by the Revenue Act of 1921 of such Act of July 5, 1884, but such prosecution or proceeding shall be subject to the limitations imposed by law prior to the enactment of the Revenue Act of 1921.

REFUNDS

SEC. 1111. Section 3220 of the Revised Statutes, as amended, is amended to read as follows:

"SEC. 3220. Except as otherwise provided in sections 284 and 319 of the Revenue Act of 1926 the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of

money as may be recovered against him in any court, for any internal-revenue taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of any thing done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section.”¹

SEC. 1112. Section 3228 of the Revised Statutes, as amended, is amended to read as follows:

“SEC. 3228. (a) All claims for the refunding or crediting of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as provided in sections 284 and 319 of the Revenue Act of 1926, be presented to the Commissioner of Internal Revenue within four years next after the payment of such tax, penalty, or sum.”¹

“(b) Except as provided in section 284 of the Revenue Act of 1926, claims for credit or refund (other than claims in respect of taxes imposed by the Revenue Act of 1916, the Revenue Act of 1917, or the Revenue Act of 1918) which at the time of the enactment of the Revenue Act of 1921 were barred from allowance by the period of limitation then in existence, shall not be allowed.”

LIMITATIONS UPON SUITS AND PROCEEDINGS BY THE TAXPAYER

SEC. 1113. (a) Section 3226 of the Revised Statutes, as amended, is reenacted without change, as follows:

“SEC. 3226. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after any such disallowance notify the taxpayer thereof by mail.”²

(b) This section shall not affect any proceeding in court instituted prior to the enactment of the Revenue Act of 1924.

PENALTIES

SEC. 1114. (a) Any person required under this Act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at

¹ See page 125.

² See page 127.

the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this Act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * * * *

(e) Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

(f) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

REVISED STATUTES

SEC. 1115. Sections 3164, 3165, 3167, 3172, and 3173 of the Revised Statutes, as amended, are reenacted without change, as follows:

"SEC. 3164. It shall be the duty of every collector of internal revenue having knowledge of any willful violation of any law of the United States relating to the revenue, within thirty days after coming into possession of such knowledge, to file with the district attorney of the district in which any fine, penalty, or forfeiture may be incurred, a statement of all the facts and circumstances of the case within his knowledge, together with the names of the witnesses, setting forth the provisions of law believed to be so violated on which reliance may be had for condemnation or conviction.

"SEC. 3165. Every collector, deputy collector, internal-revenue agent, and internal-revenue officer assigned to duty under an internal-revenue agent, is authorized to administer oaths and to take evidence touching any part of the administration of the internal-revenue laws with which he is charged, or where such oaths and evidence are authorized by law or regulation authorized by law to be taken.

"SEC. 3167. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment.

"SEC. 3172. Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.

"SEC. 3173. It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, (1) in case of a special tax, on or before the thirty-first day of July in each year, and (2) in other cases before the day on which the taxes accrue, to make a list or return, verified by oath, to the collector or a deputy collector of the district where located, of the articles or objects, including the quantity of goods, wares, and merchandise, made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: *Provided*, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, article or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: *Provided further*, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath. And if any

person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is erroneous, false, or fraudulent, or contains any undervaluation or understatement, or refuses to allow any regularly authorized Government officer to examine the books of such person, firm, or corporation, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person or any other person he may deem proper, to appear before him and produce such books at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects or income liable to tax or the returns thereof. The collector may summon any person residing or found within the State or Territory in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State or Territory, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned: *Provided*, That 'person,' as used in this section, shall be construed to include any corporation, joint-stock company or association, or insurance company when such construction is necessary to carry out its provisions."

INTEREST ON REFUNDS AND CREDITS

SEC. 1116. (a) Upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment made under the Revenue Act of 1921, the Revenue Act of 1924, or this Act, then to the date of the assessment of that amount.

(b) As used in this section—

(1) The term "additional assessment" means a further assessment for a tax of the same character previously paid in part, and includes the assessment of a deficiency under Title II or Title III of the Revenue Act of 1924 or of this Act;

(2) The term "date of the allowance of the refund" means, in the case of any income, war-profits, or excess-profits tax, the first date on which the Commissioner signs the schedule of overassessments in respect thereof.

(c) This section shall be applicable to any refund paid, and to any credit taken, on or after the date of the enactment of this Act, even though such refund or credit was allowed prior to such date.¹

INTEREST ON JUDGMENTS

SEC. 1117. Section 177 of the Judicial Code, as amended, is amended to read as follows:

"SEC. 177. (a) No interest shall be allowed on any claim up to the time of the rendition of judgment by the Court of Claims, unless upon a contract

¹ See page 131.

expressly stipulating for the payment of interest, except as provided in subdivision (b).

"(b) In any judgment of any court rendered after the enactment of the Revenue Act of 1926 (whether against the United States, a collector or deputy collector of internal revenue, a former collector or deputy collector, or the personal representative in case of death) for any internal-revenue tax erroneously or illegally assessed or collected, or for any penalty collected without authority or for any sum which was excessive or in any manner wrongfully collected, under the internal-revenue laws, interest shall be allowed at the rate of 6 per centum per annum upon the amount of such tax, penalty, or sum, from the date of the payment or collection thereof to the date of entry of such judgment or, if such judgment is reviewed by an appellate court, to the date of entry of final judgment."

PAYMENT OF AND RECEIPTS FOR TAXES

SEC. 1118. (a) Collectors may receive, at par with an adjustment for accrued interest, notes or certificates of indebtedness issued by the United States and uncertified checks in payment of income, war-profits, and excess-profits taxes and any other taxes payable other than by stamp, during such time and under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions to the same extent as if such check had not been tendered.

* * * * *

(c) In the payment of any tax under this Act not payable by stamp a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

JURISDICTION OF COURTS

SEC. 1122. (a) If any person is summoned under this Act to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(b) The district courts of the United States at the instance of the United States are hereby invested with such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the provisions of this Act. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such provisions.

(c) The paragraph added by section 1310 of the Revenue Act of 1921 at the end of paragraph Twentieth of section 24 of the Judicial Code, relating to the jurisdiction of district courts, as amended, is reenacted without change, as follows:

"Concurrent with the Court of Claims, of any suit or proceeding, commenced after the passage of the Revenue Act of 1921, for the recovery of any internal-

revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected, under the internal-revenue laws, even if the claim exceeds \$10,000, if the collector of internal revenue by whom such tax, penalty, or sum was collected is dead or is not in office as collector of internal revenue at the time such suit or proceeding is commenced."

DEPOSIT OF UNITED STATES BONDS OR NOTES IN LIEU OF SURETY

SEC. 1126. Wherever by the laws of the United States or regulations made pursuant thereto, any person is required to furnish any recognizance, stipulation, bond, guaranty, or undertaking, hereinafter called "penal bond," with surety or sureties, such person may, in lieu of such surety or sureties, deposit as security with the official having authority to approve such penal bond, United States Liberty bonds or other bonds or notes of the United States in a sum equal at their par value to the amount of such penal bond required to be furnished, together with an agreement authorizing such official to collect or sell such bonds or notes so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. The acceptance of such United States bonds or notes in lieu of surety or sureties required by law shall have the same force and effect as individual or corporate sureties, or certified checks, bank drafts, post-office money orders, or cash, for the penalty or amount of such penal bond. The bonds or notes deposited hereunder and such other United States bonds or notes as may be substituted therefor from time to time as such security, may be deposited with the Treasurer of the United States, a Federal reserve bank, or other depository duly designated for that purpose by the Secretary, which shall issue receipt therefor, describing such bonds or notes so deposited. As soon as security for the performance of such penal bond is no longer necessary, such bonds or notes so deposited shall be returned to the depositor: *Provided*, That in case a person or persons supplying a contractor with labor or material as provided by the Act of Congress, approved February 24, 1905 (33 Stat. 811), entitled "An Act to amend an Act approved August thirteenth, eighteen hundred and ninety-four, entitled 'An Act for the protection of persons furnishing materials and labor for the construction of public works,'" shall file with the obligee, at any time after a default in the performance of any contract subject to said Acts, the application and affidavit therein provided, the obligee shall not deliver to the obligor the deposited bonds or notes nor any surplus proceeds thereof until the expiration of the time limited by said Acts for the institution of suit by such person or persons, and, in case suit shall be instituted within such time, shall hold said bonds or notes or proceeds subject to the order of the court having jurisdiction thereof: *Provided further*, That nothing herein contained shall affect or impair the priority of the claim of the United States against the bonds or notes deposited or any right or remedy granted by said Acts or by this section to the United States for default upon any obligation of said penal bond: *Provided further*, That all laws inconsistent with this section are hereby so modified as to conform to the provisions hereof: *And provided further*, That nothing contained herein shall affect the authority of courts over the security, where such bonds are taken as security in judicial proceedings, or the authority of any administrative officer of the United States to receive United States bonds for security in cases authorized by existing laws. The Secretary may prescribe rules and regulations necessary and proper for carrying this section into effect.

ENFORCEMENT OF TAX LIENS

SEC. 1127. Section 3207 of the Revised Statutes, as amended, is reenacted without change, as follows:

"SEC. 3207. (a) In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell real estate to satisfy the same, the Commissioner of Internal Revenue may direct a bill in chancery to be filed, in a district court of the United States, to enforce the lien of the United States for tax upon any real estate, or to subject any real estate owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax. All persons having liens upon or claiming any interest in the real estate sought to be subjected as aforesaid, shall be made parties to such proceedings, and be brought into court as provided in other suits in chancery therein. And the said court shall, at the term next after the parties have been duly notified of the proceedings, unless otherwise ordered by the court, proceed to adjudicate all matters involved therein, and finally determine the merits of all claims to and liens upon the real estate in question, and, in all cases where a claim or interest of the United States therein is established, shall decree a sale of such real estate, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States.

"(b) Any person having a lien upon or any interest in such real estate, notice of which has been duly filed of record in the jurisdiction in which the real estate is located, prior to the filing of notice of the lien of the United States as provided by section 3186 of the Revised Statutes as amended, or any person purchasing the real estate at a sale to satisfy such prior lien or interest, may make written request to the Commissioner of Internal Revenue to direct the filing of a bill in chancery as provided in subdivision (a), and if the Commissioner fails to direct the filing of such bill within six months after receipt of such written request, such person or purchaser may, after giving notice to the Commissioner, file a petition in the district court of the United States for the district in which the real estate is located, praying leave to file a bill for a final determination of all claims to or liens upon the real estate in question. After a full hearing in open court, the district court may in its discretion enter an order granting leave to file such bill, in which the United States and all persons having liens upon or claiming any interest in the real estate shall be made parties. Service on the United States shall be had in the manner provided by sections 5 and 6 of the Act of March 3, 1887, entitled 'An Act to provide for the bringing of suits against the Government of the United States.' Upon the filing of such bill the district court shall proceed to adjudicate the matters involved therein, in the same manner as in the case of bills filed under subdivision (a) of this section. For the purpose of such adjudication, the assessment of the tax upon which the lien of the United States is based shall be conclusively presumed to be valid, and all costs of the proceedings on the petition and the bill shall be borne by the person filing the bill."

SPECIAL DEPOSITS

SEC. 1128. (a) Section 3195 of the Revised Statutes, as amended, is reenacted without change, as follows:

"SEC. 3195. When any property liable to distraint for taxes is not divisible, so as to enable the collector by sale of a part thereof to raise the whole amount of the tax, with all costs and charges, the whole of such property shall be sold, and the surplus of the proceeds of the sale, after making allowance for the amount of the tax, interest, penalties, and additions thereto, and for the

costs and charges of the distraint and sale, shall be deposited with the Treasurer of the United States as provided in subdivision (b) of section 3210."

(b) Section 3210 of the Revised Statutes, as amended, is reenacted without change, as follows:

"SEC. 3210. (a) Except as provided in subdivision (b) the gross amount of all taxes and revenues received under the provisions of this Act, and collections of whatever nature received or collected by authority of any internal-revenue law, shall be paid daily into the Treasury of the United States under instructions of the Secretary of the Treasury as internal-revenue collections, by the officer receiving or collecting the same, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description. A certificate of such payment, stating the name of the depositor and the specific account on which the deposit was made, signed by the treasurer, assistant treasurer, designated depositary, or proper officer of a deposit bank, shall be transmitted to the Commissioner of Internal Revenue.

"(b) Sums offered in compromise under the provisions of section 3229 of the Revised Statutes and section 35 of Title II of the National Prohibition Act, sums offered for the purchase of real estate under the provisions of section 3208 of the Revised Statutes, and surplus proceeds in any distraint sale, after making allowance for the amount of the tax, interest, penalties, and additions thereto, and for costs and charges of the distraint and sale, shall be deposited with the Treasurer of the United States in a special deposit account in the name of the collector making the deposit. Upon acceptance of such offer in compromise or offer for the purchase of such real estate, the amount so accepted shall be withdrawn by the collector from his special deposit account with the Treasurer of the United States and deposited in the Treasury of the United States as internal-revenue collections. Upon the rejection of any such offer, the Commissioner shall authorize the collector, through whom the amount of such offer was submitted, to refund to the maker of such offer the amount thereof. In the case of surplus proceeds from distraint sales the Commissioner shall, upon application and satisfactory proof in support thereof, authorize the collector through whom the amount was received to refund the same to the person or persons legally entitled thereto."

SEIZURE OUTSIDE COLLECTION DISTRICT

SEC. 1129. Section 3200 of the Revised Statutes is amended to read as follows:

"SEC. 3200. Any collector or deputy collector may, for the collection of taxes imposed upon any person, and committed to him for collection, seize and sell any of the property, real or personal (except property exempt from distraint and sale, under section 3187 of the Revised Statutes), or any right or interest therein, of such person situated in any other collection district within the State in which such officer resides, notwithstanding the provisions of section 3209 of the Revised Statutes; and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection district."

DATE ON WHICH DISTRAINT IS BEGUN

SEC. 1130. In determining the running of any period of limitation in respect of distraint, the distraint shall be held to have been begun (a) in the case of personal property, on the date on which the levy upon such property is made, or (b) in the case of real property, on the date on which notice of the time and place of sale is given to the person whose estate it is proposed to sell.

TITLE XII.—GENERAL PROVISIONS

REPEALS

SEC. 1200. (a) The following parts of the Revenue Act of 1924 are repealed, to take effect (except as otherwise provided in this Act) upon the enactment of this Act, subject to the limitations provided in subdivision (b) :

Title II (called "Income Tax") as of January 1, 1925, except section 257 and sections 271 to 282, inclusive;

Section 257 and sections 271 to 282, inclusive (being certain administrative provisions of the income tax) ;

Part I of Title III (called "Estate Tax") ;

Part II of Title III (called "Gift Tax") as of January 1, 1926 ;

Title IV (called "Tax on Cigars, Tobacco, and Manufactures Thereof") except section 400 ;

Section 400 (being the tax on cigars and cigarettes) effective on the expiration of 30 days after the enactment of this Act ;

Title V (called "Tax on Admissions and Dues"), effective on the expiration of 30 days after the enactment of this Act ;

Title VI (called "Excise Taxes") except subdivision (2) of section 600 ;

Subdivision (2) of section 600 (being the tax on certain automobiles) effective on the expiration of 30 days after the enactment of this Act ;

Title VII (called "Special Taxes"), effective on June 30, 1926 ;

Title VIII (called "Stamp Taxes"), effective on the expiration of 30 days after the enactment of this Act ;

Sections 1004, 1005, 1006, and 1007, subdivision (a) of section 1008, sections 1009, 1010, 1011, 1012, 1014, 1018, 1019, and 1020, subdivisions (a) and (b) of section 1021, subdivision (c) of section 1025, and sections 1026, 1027, 1028, 1029, 1030, and 1031 (being certain administrative provisions).

(b) The parts of the Revenue Act of 1924 which are repealed by this Act shall (except as provided in sections 283 and 318 and except as otherwise specifically provided in this Act) remain in force for the assessment and collection of all taxes imposed by such Act, and for the assessment, imposition, and collection of all interest, penalties, or forfeitures which have accrued or may accrue in relation to any such taxes, and for the assessment and collection, to the extent provided in the Revenue Act of 1924, of all taxes imposed by prior income, war-profits, or excess-profits tax acts, and for the assessment, imposition, and collection of all interest, penalties, or forfeitures which have accrued or may accrue in relation to any such taxes. In the case of any tax imposed by any part of the Revenue Act of 1924 repealed by this Act, if there is a tax imposed by this Act in lieu thereof, the provision imposing such tax shall remain in force until the corresponding tax under this Act takes effect under the provisions of this Act.

JOINT CONGRESSIONAL COMMITTEE ON INTERNAL-REVENUE TAXATION

SEC. 1203. (a) There is hereby established a joint congressional committee to be known as the Joint Committee on Internal Revenue Taxation (hereinafter in this section referred to as the "Joint Committee"), and to be composed of ten members as follows :

(1) Five members who are members of the Committee on Finance of the Senate, three from the majority and two from the minority party, to be chosen by such Committee ; and

(2) Five members who are members of the Committee on Ways and Means of the House of Representatives, three from the majority and two from the minority party, to be chosen by such Committee.

(b) No person shall continue to serve as a member of the Joint Committee after he has ceased to be a member of the Committee by which he was chosen, except that the members chosen by the Committee on Ways and Means who have been re-elected to the House of Representatives may continue to serve as members of the Joint Committee notwithstanding the expiration of the Congress. A vacancy in the Joint Committee shall not affect the power of the remaining members to execute the functions of the Joint Committee, and shall be filled in the same manner as the original selection, except that (1) in case of a vacancy during an adjournment or recess of Congress for a period of more than two weeks, the members of the Joint Committee who are members of the Committee entitled to fill such vacancy may designate a member of such Committee to serve until his successor is chosen by such Committee, and (2) in the case of a vacancy after the expiration of a Congress which would be filled by the Committee on Ways and Means, the members of such Committee who are continuing to serve as members of the Joint Committee may designate a person who, immediately prior to such expiration, was a member of such Committee and who is re-elected to the House of Representatives, to serve until his successor is chosen by such Committee.

(c) It shall be the duty of the Joint Committee—

(1) To investigate the operation and effects of the Federal system of internal-revenue taxes;

(2) To investigate the administration of such taxes by the Bureau of Internal Revenue or any executive department, establishment, or agency, charged with their administration;

(3) To make such other investigations in respect of such system of taxes as the Joint Committee may deem necessary;

(4) To investigate measures and methods for the simplification of such taxes, particularly the income tax;

(5) To publish, from time to time, for public examination and analysis, proposed measures and methods for the simplification of such taxes, and to make to the Senate and the House of Representatives, not later than December 31, 1927, a definite report thereon, together with such recommendations as it may deem advisable; and

(6) To report, from time to time, to the Committee on Finance and the Committee on Ways and Means and, in its discretion, to the Senate or the House of Representatives, or both, the results of its investigations, together with such recommendations as it may deem advisable.

(d) The Joint Committee shall have the same right to obtain data and to inspect returns as the Committee on Ways and Means or the Committee on Finance, and to submit any relevant or useful information thus obtained to the Senate, the House of Representatives, the Committee on Ways and Means, or the Committee on Finance. The Committee on Ways and Means or the Committee on Finance may submit such information to the House or to the Senate, or to both the House and the Senate, as the case may be.

(e) The Joint Committee shall meet and organize as soon as practicable after at least a majority of the members have been chosen, and shall elect a chairman and vice chairman from among its members and shall have power to appoint and fix the compensation of a clerk and such experts and clerical, stenographic, and other assistants, as it deems advisable.

(f) The Joint Committee, or any subcommittee thereof, is authorized to hold hearings and to sit and act at such places and times, to require by subpoena or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, to take such testimony, to have such printing and binding done, and to make such expenditures, as it deems advisable. The cost of stenographic services in reporting such hearings shall not be in excess of 25 cents per hundred words. Subpoenas for witnesses shall be issued under the signature of the chairman or vice chairman.

(g) The members shall serve without compensation in addition to that received for their services as Members of Congress; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Joint Committee, other than expenses in connection with meetings of the Joint Committee held in the District of Columbia during such times as the Congress is in session.

(h) The expenses of the Joint Committee shall be paid one-half from the contingent fund of the Senate and one-half from the contingent fund of the House of Representatives, upon vouchers signed by the chairman or vice chairman.

SAVING CLAUSE IN EVENT OF UNCONSTITUTIONALITY

SEC. 1213. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

EFFECTIVE DATE OF ACT

SEC. 1214. Except as otherwise provided, this Act shall take effect upon its enactment.

Approved, February 26, 1926, 10.25 a. m.

REVISED STATUTES

RELEASE OF LIEN

Section 3186, Revised Statutes (as amended by section 613 (a), Revenue Act of 1928 [U. S. C., Sup. VII, title 26, secs. 1560-1567], and as further amended by section 509 of the Revenue Act of 1934).

(a) If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

(b) Such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) in accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; or

(2) in the office of the clerk of the United States District Court for the judicial district in which the property subject to the lien is situated, when-

ever the State or Territory has not by law provided for the filing of such notice; or

(3) in the office of the clerk of the Supreme Court of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(c) Subject to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, the collector of internal revenue charged with an assessment in respect of any tax—

(1) May issue a certificate of release of the lien if the collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable;

(2) May issue a certificate of release of the lien if there is furnished to the collector and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regulations;

(3) May issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon such property.

(4) May issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the collector in part satisfaction of the liability in respect of such tax an amount determined by the Commissioner, which shall not be less than the value, as determined by him, of the interest of the United States in the part to be so discharged. In determining such value the Commissioner shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the United States.

(d) A certificate of release or of partial discharge issued under this section shall be held conclusive that the lien upon the property covered by the certificate is extinguished.

(e) The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation provide for the acceptance of a single bond complying both with the requirements of section 272 (j) of the Revenue Act of 1928 (relating to the extension of time for the payment of a deficiency), or of any similar provisions of any prior law, and the requirements of subsection (c) of this section.

(f) Subsections (c), (d), and (e) of this section shall apply to a lien in respect of any internal-revenue tax, whether or not the lien is imposed by this section.

LIST OF THE SEVERAL DIVISIONS AND LOCATIONS OF OFFICES OF INTERNAL REVENUE AGENTS IN CHARGE

(Communications should be addressed:
United States Internal Revenue Agent in Charge,

-----, -----)
City State

Territory embraced	Name of division	Location of office
Alabama -----	Nashville -----	Nashville, Tenn.
Alaska -----	Seattle -----	Seattle, Wash.
Arizona -----	Los Angeles -----	Los Angeles, Calif.
Arkansas -----	Oklahoma -----	Oklahoma City, Okla.
California:		
Counties of Monterey, Kings, Tulare, Inyo, and counties north.	San Francisco -----	San Francisco, Calif.
Counties of San Luis Obispo, Kern, San Bernardino, and counties south.	Los Angeles -----	Los Angeles, Calif.
Colorado -----	Denver -----	Denver, Colo.
Connecticut -----	New Haven -----	New Haven, Conn.
Delaware -----	Baltimore -----	Baltimore, Md.
District of Columbia -----	do -----	Do.
Florida -----	Jacksonville -----	Jacksonville, Fla.
Georgia -----	Atlanta -----	Atlanta, Ga.
Hawaii -----	Honolulu -----	Honolulu, Hawaii.
Idaho -----	Salt Lake -----	Salt Lake City, Utah.
Illinois:		
Counties of Henderson, Warren, Knox, Peoria, Marshall, La Salle, Grundy, Kankakee, and counties north.	Chicago -----	Chicago, Ill.
Counties of Hancock, McDonough, Fulton, Tazewell, Woodford, Liv- ingston, Ford, Iroquois, and coun- ties south.	Springfield -----	Springfield, Ill.
Indiana -----	Indianapolis -----	Indianapolis, Ind.
Iowa -----	Omaha -----	Omaha, Nebr.
Kansas -----	Wichita -----	Wichita, Kans.
Kentucky -----	Louisville -----	Louisville, Ky.
Louisiana -----	New Orleans -----	New Orleans, La.
Maine -----	Boston -----	Boston, Mass.
Maryland -----	Baltimore -----	Baltimore, Md.
Massachusetts -----	Boston -----	Boston, Mass.
Michigan -----	Detroit -----	Detroit, Mich.
Minnesota -----	St. Paul -----	St. Paul, Minn.
Mississippi -----	New Orleans -----	New Orleans, La.
Missouri -----	St. Louis -----	St. Louis, Mo.
Montana -----	Salt Lake -----	Salt Lake City, Utah.
Nebraska -----	Omaha -----	Omaha, Nebr.
Nevada -----	San Francisco -----	San Francisco, Calif.
New Hampshire -----	Boston -----	Boston, Mass.
New Jersey -----	Newark -----	Newark, N. J.
New Mexico -----	Denver -----	Denver, Colo.
New York:		
County of New York, north to Twenty-third Street.	Second New York.	17 Battery Place, New York, N. Y.

Territory embraced	Name of division	Location of office
New York—Continued		
Counties of Kings, Nassau, Queens, Richmond, and Suffolk.	Brooklyn-----	Brooklyn, N. Y.
County of New York, north of and including 23d Street, and counties of Albany, Bronx, Clinton, Columbia, Dutchess, Essex, Fulton, Greene, Hamilton, Montgomery, Orange, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, Washington, and Westchester.	Upper New York.	807 U. S. Parcel Post Building, 341 Ninth Ave., New York, N. Y.
Counties of Franklin, Herkimer, Otsego, Delaware, and counties west.	Buffalo-----	Buffalo, N. Y.
North Carolina-----	Greensboro-----	Greensboro, N. C.
North Dakota-----	St. Paul-----	St. Paul, Minn.
Ohio:		
Counties of Preble, Miami, Clark, Madison, Union, Marion, Morrow, Knox, Coshocton, Guernsey, Noble, Washington, and counties south.	Cincinnati-----	Cincinnati, Ohio.
Counties of Darke, Shelby, Champaign, Logan, Hardin, Wyandot, Crawford, Richland, Ashland, Holmes, Tuscarawas, Harrison, Belmont, Monroe, and counties north.	Cleveland-----	Cleveland, Ohio.
Oklahoma-----	Oklahoma-----	Oklahoma City, Okla.
Oregon-----	Seattle-----	Seattle, Wash.
Pennsylvania:		
Counties of Potter, Clinton, Center, Blair, Bedford, and counties east.	Philadelphia--	Philadelphia, Pa.
Counties of McKean, Cameron, Clearfield, Cambria, Somerset, and counties west.	Pittsburgh---	Pittsburgh, Pa.
Rhode Island-----	New Haven---	New Haven, Conn.
South Carolina-----	Columbia-----	Columbia, S. C.
South Dakota-----	St. Paul-----	St. Paul, Minn.
Tennessee-----	Nashville-----	Nashville, Tenn.
Texas-----	Dallas-----	Dallas, Tex.
Utah-----	Salt Lake-----	Salt Lake City, Utah.
Vermont-----	Boston-----	Boston, Mass.
Virginia-----	Richmond-----	Richmond, Va.
Washington-----	Seattle-----	Seattle, Wash.
West Virginia-----	Huntington---	Huntington, W. Va.
Wisconsin-----	Milwaukee---	Milwaukee, Wis.
Wyoming-----	Denver-----	Denver, Colo.

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U. S. TREASURY DEPARTMENT
BUREAU OF INTERNAL REVENUE

REGULATIONS 80

(1937 EDITION)

ESTATE TAX



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REGULATIONS 80 (1937 EDITION)

RELATING TO THE

ESTATE TAX

UNDER TITLE III OF THE REVENUE ACT OF 1926, AND UNDER SUCH TITLE AS AMENDED BY
THE REVENUE ACTS OF 1928, 1932, 1934, 1935, AND 1936

AND THE

ADDITIONAL ESTATE TAX

UNDER TITLE II OF THE REVENUE ACT OF 1932, AND UNDER SUCH TITLE AS AMENDED BY
THE REVENUE ACTS OF 1934, 1935, AND 1936

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REGULATIONS 80

(1937 EDITION)

ESTATE TAX

[Except as otherwise indicated, the section references are to the Revenue Act of 1926, or the Revenue Act of 1926 as amended. References to other Revenue Acts are specific]

TITLE III.—ESTATE TAX

SEC. 300. When used in this title—

(a) The term “executor” means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent;

(b) The term “net estate” means the net estate as determined under the provisions of section 303;

(c) The term “month” means calendar month; and

(d) The term “collector” means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner.

SEC. 301. (a) In lieu of the tax imposed by Title III of the Revenue Act of 1924, a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 303) is hereby imposed upon the transfer of the net estate of every decedent dying after the enactment of this act, whether a resident or nonresident of the United States;

1 per centum of the amount of the net estate not in excess of \$50,000;

2 per centum of the amount by which the net estate exceeds \$50,000 and does not exceed \$100,000;

3 per centum of the amount by which the net estate exceeds \$100,000 and does not exceed \$200,000;

4 per centum of the amount by which the net estate exceeds \$200,000 and does not exceed \$400,000;

5 per centum of the amount by which the net estate exceeds \$400,000 and does not exceed \$600,000;

6 per centum of the amount by which the net estate exceeds \$600,000 and does not exceed \$800,000;

7 per centum of the amount by which the net estate exceeds \$800,000 and does not exceed \$1,000,000;

8 per centum of the amount by which the net estate exceeds \$1,000,000 and does not exceed \$1,500,000;

9 per centum of the amount by which the net estate exceeds \$1,500,000 and does not exceed \$2,000,000;

10 per centum of the amount by which the net estate exceeds \$2,000,000 and does not exceed \$2,500,000;

11 per centum of the amount by which the net estate exceeds \$2,500,000 and does not exceed \$3,000,000;

12 per centum of the amount by which the net estate exceeds \$3,000,000 and does not exceed \$3,500,000;

13 per centum of the amount by which the net estate exceeds \$3,500,000 and does not exceed \$4,000,000;

14 per centum of the amount by which the net estate exceeds \$4,000,000 and does not exceed \$5,000,000;

15 per centum of the amount by which the net estate exceeds \$5,000,000 and does not exceed \$6,000,000;

16 per centum of the amount by which the net estate exceeds \$6,000,000 and does not exceed \$7,000,000;

17 per centum of the amount by which the net estate exceeds \$7,000,000 and does not exceed \$8,000,000;

18 per centum of the amount by which the net estate exceeds \$8,000,000 and does not exceed \$9,000,000;

19 per centum of the amount by which the net estate exceeds \$9,000,000 and does not exceed \$10,000,000;

20 per centum of the amount by which the net estate exceeds \$10,000,000.

TITLE II.—ADDITIONAL ESTATE TAX. (REVENUE ACT OF 1932, AS AMENDED.)

SEC. 401. Revenue Act of 1932, as amended by section 201 of the Revenue Act of 1935.

(a) In addition to the estate tax imposed by section 301(a) of the Revenue Act of 1926, there is hereby imposed upon the transfer of the net estate of every decedent dying after the enactment of this Act, whether a resident or nonresident of the United States, a tax equal to the excess of—

(1) the amount of a tentative tax computed under subsection (b) of this section, over

(2) the amount of the tax imposed by section 301(a) of the Revenue Act of 1926, computed without regard to the provisions of this title.

(b) The tentative tax referred to in subsection (a)(1) of this section shall equal the sum of the following percentages of the value of the net estate:

Upon net estates not in excess of \$10,000, 2 per centum.

\$200 upon net estates of \$10,000; and upon net estates in excess of \$10,000 and not in excess of \$20,000, 4 per centum in addition of such excess.

\$600 upon net estates of \$20,000; and upon net estates in excess of \$20,000 and not in excess of \$30,000, 6 per centum in addition of such excess.

\$1,200 upon net estates of \$30,000; and upon net estates in excess of \$30,000 and not in excess of \$40,000, 8 per centum in addition of such excess.

\$2,000 upon net estates of \$40,000; and upon net estates in excess of \$40,000 and not in excess of \$50,000, 10 per centum in addition of such excess.

\$3,000 upon net estates of \$50,000; and upon net estates in excess of \$50,000 and not in excess of \$70,000, 12 per centum in addition of such excess.

\$5,400 upon net estates of \$70,000; and upon net estates in excess of \$70,000 and not in excess of \$100,000, 14 per centum in addition of such excess.

\$9,600 upon net estates of \$100,000; and upon net estates in excess of \$100,000 and not in excess of \$200,000, 17 per centum in addition of such excess.

\$26,600 upon net estates of \$200,000; and upon net estates in excess of \$200,000 and not in excess of \$400,000, 20 per centum in addition of such excess.

\$66,600 upon net estates of \$400,000; and upon net estates in excess of \$400,000 and not in excess of \$600,000, 23 per centum in addition of such excess.

\$112,600 upon net estates of \$600,000; and upon net estates in excess of \$600,000 and not in excess of \$800,000, 26 per centum in addition of such excess.

\$164,600 upon net estates of \$800,000 and upon net estates in excess of \$800,000, and not in excess of \$1,000,000, 29 per centum in addition of such excess.

\$222,600 upon net estates of \$1,000,000; and upon net estates in excess of \$1,000,000 and not in excess of \$1,500,000, 32 per centum in addition of such excess.

\$382,600 upon net estates of \$1,500,000; and upon net estates in excess of \$1,500,000 and not in excess of \$2,000,000, 35 per centum in addition of such excess.

\$557,600 upon net estates of \$2,000,000; and upon net estates in excess of \$2,000,000 and not in excess of \$2,500,000, 38 per centum in addition of such excess.

\$747,600 upon net estates of \$2,500,000; and upon net estates in excess of \$2,500,000 and not in excess of \$3,000,000, 41 per centum in addition of such excess.

\$952,600 upon net estates of \$3,000,000; and upon net estates in excess of \$3,000,000 and not in excess of \$3,500,000, 44 per centum in addition of such excess.

\$1,172,600 upon net estates of \$3,500,000; and upon net estates in excess of \$3,500,000 and not in excess of \$4,000,000, 47 per centum in addition of such excess.

\$1,407,600 upon net estates of \$4,000,000; and upon net estates in excess of \$4,000,000 and not in excess of \$4,500,000, 50 per centum in addition of such excess.

\$1,657,600 upon net estates of \$4,500,000; and upon net estates in excess of \$4,500,000 and not in excess of \$5,000,000, 53 per centum in addition of such excess.

\$1,922,600 upon net estates of \$5,000,000; and upon net estates in excess of \$5,000,000 and not in excess of \$6,000,000, 56 per centum in addition of such excess.

\$2,482,600 upon net estates of \$6,000,000; and upon net estates in excess of \$6,000,000 and not in excess of \$7,000,000, 59 per centum in addition of such excess.

\$3,072,600 upon net estates of \$7,000,000; and upon net estates in excess of \$7,000,000 and not in excess of \$8,000,000, 61 per centum in addition of such excess.

\$3,682,600 upon net estates of \$8,000,000; and upon net estates in excess of \$8,000,000 and not in excess of \$9,000,000, 63 per centum in addition of such excess.

\$4,312,600 upon net estates of \$9,000,000; and upon net estates in excess of \$9,000,000 and not in excess of \$10,000,000, 65 per centum in addition of such excess.

\$4,962,600 upon net estates of \$10,000,000; and upon net estates in excess of \$10,000,000 and not in excess of \$20,000,000, 67 per centum in addition of such excess.

\$11,662,600 upon net estates of \$20,000,000; and upon net estates in excess of \$20,000,000 and not in excess of \$50,000,000, 69 per centum in addition of such excess.

\$32,362,600 upon net estates of \$50,000,000; and upon net estates in excess of \$50,000,000, 70 per centum in addition of such excess.

(c) For the purposes of this section the value of the net estate shall be determined as provided in Title III of the Revenue Act of 1926, as amended, except that in lieu of the exemption of \$100,000 provided in section 303(a) (4) of such Act, the exemption shall be \$40,000.

NOTE.—Section 401(b) of the Revenue Act of 1932 was amended by Section 405(a) of the Revenue Act of 1934, and was further amended by section 201(a) of the Revenue Act of 1935.

Section 401(c) of the Revenue Act of 1932 was amended by section 201(b) of the Revenue Act of 1935.

Section 201(d) of the Revenue Act of 1935 reads as follows:

"The amendments made by this section shall be effective only with respect to transfers of estates of decedents dying after the date of the enactment of this Act."

SEC. 401. Revenue Act of 1932, as originally enacted. * * *

(b) The tentative tax referred to in subsection (a) (1) of this section shall equal the sum of the following percentages of the value of the net estate:

Upon net estates not in excess of \$10,000, 1 per centum.

\$100 upon net estates of \$10,000; and upon net estates in excess of \$10,000 and not in excess of \$20,000, 2 per centum in addition of such excess.

\$300 upon net estates of \$20,000; and upon net estates in excess of \$20,000 and not in excess of \$30,000, 3 per centum in addition of such excess.

\$600 upon net estates of \$30,000; and upon net estates in excess of \$30,000 and not in excess of \$40,000, 4 per centum in addition of such excess.

\$1,000 upon net estates of \$40,000; and upon net estates in excess of \$40,000 and not in excess of \$50,000, 5 per centum in addition of such excess.

\$1,500 upon net estates of \$50,000; and upon net estates in excess of \$50,000 and not in excess of \$100,000, 7 per centum in addition of such excess.

\$5,000 upon net estates of \$100,000; and upon net estates in excess of \$100,000 and not in excess of \$200,000, 9 per centum in addition of such excess.

\$14,000 upon net estates of \$200,000; and upon net estates in excess of \$200,000 and not in excess of \$400,000, 11 per centum in addition of such excess.

\$36,000 upon net estates of \$400,000; and upon net estates in excess of \$400,000 and not in excess of \$600,000, 13 per centum in addition of such excess.

\$62,000 upon net estates of \$600,000; and upon net estates in excess of \$600,000 and not in excess of \$800,000, 15 per centum in addition of such excess.

\$92,000 upon net estates of \$800,000; and upon net estates in excess of \$800,000 and not in excess of \$1,000,000, 17 per centum in addition of such excess.

\$126,000 upon net estates of \$1,000,000; and upon net estates in excess of \$1,000,000 and not in excess of \$1,500,000, 19 per centum in addition of such excess.

\$221,000 upon net estates of \$1,500,000; and upon net estates in excess of \$1,500,000 and not in excess of \$2,000,000, 21 per centum in addition of such excess.

\$326,000 upon net estates of \$2,000,000; and upon net estates in excess of \$2,000,000 and not in excess of \$2,500,000, 23 per centum in addition of such excess.

\$441,000 upon net estates of \$2,500,000; and upon net estates in excess of \$2,500,000 and not in excess of \$3,000,000, 25 per centum in addition of such excess.

\$566,000 upon net estates of \$3,000,000; and upon net estates in excess of \$3,000,000 and not in excess of \$3,500,000, 27 per centum in addition of such excess.

\$701,000 upon net estates of \$3,500,000; and upon net estates in excess of \$3,500,000 and not in excess of \$4,000,000, 29 per centum in addition of such excess.

\$846,000 upon net estates of \$4,000,000; and upon net estates in excess of \$4,000,000 and not in excess of \$4,500,000, 31 per centum in addition of such excess.

\$1,001,000 upon net estates of \$4,500,000; and upon net estates in excess of \$4,500,000 and not in excess of \$5,000,000, 33 per centum in addition of such excess.

\$1,166,000 upon net estates of \$5,000,000; and upon net estates in excess of \$5,000,000 and not in excess of \$6,000,000, 35 per centum in addition of such excess.

\$1,516,000 upon net estates of \$6,000,000; and upon net estates in excess of \$6,000,000 and not in excess of \$7,000,000, 37 per centum in addition of such excess.

\$1,886,000 upon net estates of \$7,000,000; and upon net estates in excess of \$7,000,000 and not in excess of \$8,000,000, 39 per centum in addition of such excess.

\$2,276,000 upon net estates of \$8,000,000; and upon net estates in excess of \$8,000,000 and not in excess of \$9,000,000, 41 per centum in addition of such excess.

\$2,686,000 upon net estates of \$9,000,000; and upon net estates in excess of \$9,000,000 and not in excess of \$10,000,000, 43 per centum in addition of such excess.

\$3,116,000 upon net estates of \$10,000,000; and upon net estates in excess of \$10,000,000, 45 per centum in addition of such excess.

(c) For the purposes of this section the value of the net estate shall be determined as provided in Title III of the Revenue Act of 1926, as amended, except that in lieu of the exemption of \$100,000 provided in section 303(a)(4) of such Act, the exemption shall be \$50,000.

SEC. 405. Revenue Act of 1934.

(a) Section 401(b) of the Revenue Act of 1932 is amended to read as follows:

"(b) The tentative tax referred to in subsection (a)(1) of this section shall equal the sum of the following percentages of the value of the net estate:

"Upon net estates not in excess of \$10,000, 1 per centum.

"\$100 upon net estates of \$10,000; and upon net estates in excess of \$10,000 and not in excess of \$20,000, 2 per centum in addition of such excess.

"\$300 upon net estates of \$20,000; and upon net estates in excess of \$20,000 and not in excess of \$30,000, 3 per centum in addition of such excess.

"\$600 upon net estates of \$30,000; and upon net estates in excess of \$30,000 and not in excess of \$40,000, 4 per centum in addition of such excess.

"\$1,000 upon net estates of \$40,000; and upon net estates in excess of \$40,000 and not in excess of \$50,000, 5 per centum in addition of such excess.

"\$1,500 upon net estates of \$50,000; and upon net estates in excess of \$50,000 and not in excess of \$70,000, 7 per centum in addition of such excess.

"\$2,900 upon net estates of \$70,000; and upon net estates in excess of \$70,000 and not in excess of \$100,000, 9 per centum in addition of such excess.

"\$5,600 upon net estates of \$100,000; and upon net estates in excess of \$100,000 and not in excess of \$200,000, 12 per centum in addition of such excess.

"\$17,600 upon net estates of \$200,000; and upon net estates in excess of \$200,000 and not in excess of \$400,000, 18 per centum in addition of such excess.

"\$49,600 upon net estates of \$400,000; and upon net estates in excess of \$400,000 and not in excess of \$600,000, 19 per centum in addition of such excess.

"\$87,600 upon net estates of \$600,000; and upon net estates in excess of \$600,000 and not in excess of \$800,000, 22 per centum in addition of such excess.

"\$131,600 upon net estates of \$800,000; and upon net estates in excess of \$800,000 and not in excess of \$1,000,000, 25 per centum in addition of such excess.

"\$181,600 upon net estates of \$1,000,000; and upon net estates in excess of \$1,000,000 and not in excess of \$1,500,000, 28 per centum in addition of such excess.

"\$321,600 upon net estates of \$1,500,000; and upon net estates in excess of \$1,500,000 and not in excess of \$2,000,000, 31 per centum in addition of such excess.

"\$476,600 upon net estates of \$2,000,000; and upon net estates in excess of \$2,000,000 and not in excess of \$2,500,000, 34 per centum in addition of such excess.

"\$646,600 upon net estates of \$2,500,000; and upon net estates in excess of \$2,500,000 and not in excess of \$3,000,000, 37 per centum in addition of such excess.

"\$831,600 upon net estates of \$3,000,000; and upon net estates in excess of \$3,000,000 and not in excess of \$3,500,000, 40 per centum in addition of such excess.

"\$1,031,600 upon net estates of \$3,500,000; and upon net estates in excess of \$3,500,000 and not in excess of \$4,000,000, 43 per centum in addition of such excess.

"\$1,246,600 upon net estates of \$4,000,000; and upon net estates in excess of \$4,000,000 and not in excess of \$4,500,000, 46 per centum in addition of such excess.

"\$1,476,600 upon net estates of \$4,500,000; and upon net estates in excess of \$4,500,000 and not in excess of \$5,000,000, 48 per centum in addition of such excess.

"\$1,716,600 upon net estates of \$5,000,000; and upon net estates in excess of \$5,000,000 and not in excess of \$6,000,000, 50 per centum in addition of such excess.

"\$2,216,600 upon net estates of \$6,000,000; and upon net estates in excess of \$6,000,000 and not in excess of \$7,000,000, 52 per centum in addition of such excess.

"\$2,736,600 upon net estates of \$7,000,000; and upon net estates in excess of \$7,000,000 and not in excess of \$8,000,000, 54 per centum in addition of such excess.

"\$3,276,600 upon net estates of \$8,000,000; and upon net estates in excess of \$8,000,000 and not in excess of \$9,000,000, 56 per centum in addition of such excess.

"\$3,836,600 upon net estates of \$9,000,000; and upon net estates in excess of \$9,000,000 and not in excess of \$10,000,000, 58 per centum in addition of such excess.

"\$4,416,600 upon net estates of \$10,000,000; and upon net estates in excess of \$10,000,000, 60 per centum in addition of such excess."

(b) The amendment made by this section shall be effective only with respect to transfers of estates of decedents dying after the date of the enactment of this Act.

ARTICLE 1. Estate tax statutes.—Current Federal estate taxation consists of, *first*, the estate tax imposed by the Revenue Act of 1926, as amended, and, *second*, the additional estate tax imposed by the Revenue Act of 1932, as amended.

Basic Act.—The Revenue Act of 1926 (Title III), enacted 10.25 a. m., eastern standard time, February 26, 1926, imposes an estate tax against which credits are allowable, under certain conditions and limitations, for Federal gift tax and for estate, inheritance, legacy, or succession taxes paid a State or Territory of the United States, or the District of Columbia. Under this Act, as amended, a specific exemption of \$100,000 is authorized for the estate of a resident or citizen of the United States. Such Act is denominated the basic Act

for the reason that its provisions equally apply to the additional tax imposed by the Revenue Act of 1932, as amended, save as to rates, the amount of the specific exemption, and the credits allowed for the gift tax and for estate, inheritance, legacy, or succession taxes.

Act imposing additional estate tax.—The Revenue Act of 1932 (Title II), enacted 5 p. m., eastern standard time, June 6, 1932, imposes an additional estate tax against which no credit is allowable for estate, inheritance, legacy, or succession taxes, although, under certain conditions and limitations, a credit is allowable for Federal gift tax. By this Act, as amended, a specific exemption of \$40,000 is authorized for the estate of a resident or citizen of the United States.

Chronological description of statutes.—The Federal estate tax was first imposed by the Act of September 8, 1916, which authorized a specific exemption of \$50,000 for the estate of a resident of the United States. This law was amended by the Act of March 3, 1917 (Title III), by increasing the rates of tax. The Revenue Act of 1917 (Title IX), imposed a tax upon the transfer of the net estate of decedents dying after October 3, 1917, in addition to the tax imposed by the Revenue Act of 1916, as amended. The Revenue Act of 1918 (Title IV), which became effective at 6.55 p. m., eastern standard time, February 24, 1919, reduced the rates applicable to net estates below \$1,500,000, and contained a number of provisions not found in any of the prior Acts, among which was a special subdivision pertaining to life insurance. The Revenue Act of 1921 (Title IV) became effective at 3.55 p. m., eastern standard time, November 23, 1921. It reenacted without change the rates of Title IV of the Revenue Act of 1918, and embodied numerous minor changes.

The Revenue Act of 1924 (Part I, Title III) became effective at 4.01 p. m., eastern standard time, June 2, 1924, and, as originally enacted, increased the rates applicable to net estates in excess of \$100,000, as compared with those of Title IV of the Revenue Act of 1921. It contained provisions not found in any of the prior Acts, among which was a provision authorizing a credit not in excess of 25 per cent of the tax for estate, inheritance, legacy, or succession taxes paid a State, Territory, or the District of Columbia, but did not include all of the exemptions accorded by the Revenue Act of 1921.

The Revenue Act of 1926 (Title III) increased the specific exemption authorized in the case of a resident decedent from \$50,000 to \$100,000, reduced the rates applicable to net estates in excess of \$100,000, and amended the rates imposed by Part I, Title III, of the Revenue Act of 1924 by substituting for such rates the same rates imposed by the Revenue Acts of 1918 and 1921. This Act authorizes a credit in estates of decedents dying after its enactment for estate, inheritance, legacy, or succession taxes paid to a State,

Territory, or the District of Columbia not to exceed 80 per cent of the tax imposed by the Act.

The Revenue Act of 1928 (Part I, Title II), which became effective at 8 a. m., eastern standard time, May 29, 1928, did not repeal Title III of the Revenue Act of 1926, but made certain amendments to that title and amended and supplemented the general administrative provisions of the Revenue Act of 1926. Public Resolution No. 131, Seventy-first Congress, approved 10.30 p. m., eastern standard time, March 3, 1931, amended section 302(c) of the Revenue Act of 1926 relating to certain transfers made during the decedent's life.

The Revenue Act of 1932 imposes a tax upon the net estates of decedents dying after the effective date thereof, in addition to the tax imposed by the Revenue Act of 1926, to be assessed, collected, and paid in the same manner and subject to the same provisions of law as the tax imposed by the Revenue Act of 1926. As originally enacted it authorized a specific exemption of \$50,000 for the estate of a resident. This Act also, by Title VI, amended and supplemented the provisions of the Revenue Act of 1926.

The Revenue Act of 1934 amended the Revenue Act of 1932 by increasing the rates for the computation of the additional tax with respect to the estates of decedents dying on or after May 11, 1934, and also by Title II and Title III amended and supplemented certain provisions of the Revenue Act of 1926 and the Revenue Act of 1932, effective 11.40 a. m., eastern standard time, May 10, 1934. This Act placed the estates of nonresident citizens of the United States in the same category with estates of residents by making the specific exemptions applicable and by including for tax personal property situated outside the United States. The Revenue Act of 1935, enacted 6 p. m., eastern standard time, August 30, 1935, increased the rates for the computation of the additional tax imposed by the Revenue Act of 1932, as previously amended, reduced the specific exemption provided by the Revenue Act of 1932 from \$50,000 to \$40,000, and authorized an option whereby the executor may elect to have the property in the gross estate valued as of a date or dates subsequent to the date of the decedent's death. It also changed the due date of the tax from 1 year after the decedent's death to 15 months after such date. These amendments became effective with respect to the estates of decedents dying on or after August 31, 1935. The Revenue Act of 1936, enacted 9 p. m., eastern standard time, June 22, 1936, amended section 302(d) of the Revenue Act of 1926, as amended, relative to certain transfers made during the decedent's life and made certain other amendments of the administrative provisions.

ART. 2. Transfers and interests reached.—In addition to property passing under a will or the intestate laws, the gross estate for the purpose of the estate tax includes, as more specifically explained

hereafter in these regulations, certain transfers made during the decedent's life without an adequate and full consideration in money or money's worth, joint estates with right of survivorship, tenancies by the entirety, life insurance even though payable to beneficiaries other than the estate, property over which the decedent exercised a general power of appointment, and dower or curtesy of the surviving spouse, or statutory estate in lieu thereof.

ART. 3. Neither a property nor an inheritance tax.—The Federal estate tax is imposed upon the transfer of the net estate, determined in the manner prescribed by the applicable law. (See article 1.) The tax is not laid upon the property but upon the transfer of the entire net estate and not any particular legacy, devise, or distributive share. The relationship of the beneficiary to the decedent has no bearing upon the question of liability or the extent thereof. The transfer of property is taxable although it escheats to the State for lack of heirs.

ESTATES SUBJECT TO TAX

ART. 4. Description of taxable estates.—The tax is imposed upon the transfer of the net estate. The term "net estate" has a distinct meaning in the statute, signifying the difference between the total value of the gross estate and the total of the authorized deductions. One of the deductions authorized in the case of the estate of a resident of the United States is a specific exemption. A specific exemption is also an authorized deduction in the case of the estate of a citizen of the United States regardless of residence, if the decedent died after 11.40 a. m., eastern standard time, May 10, 1934. For detailed information regarding the specific exemption, see article 48.

There is no basis for tax if the value of the gross estate does not exceed the total amount of the authorized deductions. Whether taxable or not, a return must be filed in every case, except in the case the value of the gross estate at the date of death does not exceed the amount of the specific exemption allowable. For detailed information regarding returns, see articles 63, 64, 65, and 70.

ART. 5. Definition of "citizen," "resident," and "nonresident."—The statute provides (paragraph (5) of section 2(a)) that the term "United States," when used in a geographical sense, includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

A resident is one who, at the time of his death, had his domicile in the United States; or one who was a citizen of the United States at the time of death and with respect to whose property any probate or administration proceedings are had in the United States Court for China. (See section 321(a).) A missionary who, at the time of death, was serving as such under a foreign missionary board of any

religious denomination in the United States, will be presumed to have died a resident of the United States, if domiciled therein at the time of his or her commission and departure for such service, and not a nonresident merely by reason of his or her intention to remain permanently in such service. (See section 303(f).) All persons not residents of the United States as above defined, or to whom the presumption just stated does not apply, are nonresidents.

A citizen of the United States is a nonresident if his domicile is in Puerto Rico, the Philippine Islands, or other foreign country, whereas a subject or a citizen of a foreign country is a resident if his domicile is in the United States. A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal.

Every person born or naturalized in the United States (including citizens and residents of possessions of the United States who have been made citizens of the United States by treaty or Act of Congress) who owes his allegiance to or is entitled to the protection of the United States is a citizen thereof. When any naturalized citizen has left the United States and resided for two years or more in the foreign country from which he came, or five years or more in any other foreign country, it is presumed that he has ceased to be a citizen of the United States. This presumption does not apply, however, to residents abroad when the United States was at war, nor does it apply in the case of individuals born in the United States. However, even though an individual born in the United States of either citizen or alien parents resided in a foreign country for a number of years, he would still be a citizen of the United States unless he had become naturalized in or taken an oath of allegiance to the foreign country of residence or some other foreign state. A person who has filed his declaration of intention of becoming a citizen of the United States, but who has not yet received his final citizenship papers, is an alien.

Subsequent to the enactment of the amendments to the Revenue Act of 1926, made by the Revenue Act of 1934, different provisions control the determination of the tax liability of the estates of citizens or residents of the United States and the estates of nonresidents not citizens of the United States. Prior to the enactment of the amendments contained in the Revenue Act of 1934 the tax liability was determined on the basis of the decedent's residence within or without the United States, regardless of citizenship, except as to estates administered in the United States Court for China as in this article indicated.

DETERMINATION OF TAX LIABILITY

ART. 6. Manner of determining liability.—The first step in the determination of tax liability is to ascertain the total value of the decedent's gross estate. (See articles 10 to 28, inclusive; also article 49.) The second step is to subtract from the value of the gross estate the total amount of the deductions authorized in order to arrive at the value of the net estate. (See articles 29 to 48, inclusive, and articles 50 to 55, inclusive.) The third step is the computation of the tax and any allowable credits. (See articles 7, 8, and 9.)

If the specific exemption is applicable and the decedent died after the enactment of the Revenue Act of 1932, the net estate must be determined, for the computation of the tax imposed by the Revenue Act of 1926, on the basis of a specific exemption of \$100,000, and the net estate must also be determined, for the computation of the additional tax imposed by the Revenue Act of 1932, or by the Revenue Act of 1932 as amended, on the basis of a specific exemption of \$50,000 if the decedent died prior to August 31, 1935, or on a basis of a specific exemption of \$40,000 if the decedent died on or after August 31, 1935.

ART. 7. Rates of tax.—The Revenue Act of 1916, the amendment thereto of March 3, 1917, the Revenue Act of 1917, the Revenue Act of 1918, and the Revenue Act of 1924, as originally enacted, each imposed different rates of tax. The rates imposed by the Revenue Act of 1921 are the same as those prescribed in the Revenue Act of 1918. The rates imposed by the Revenue Act of 1924, as originally enacted, were different from those prescribed in any of the prior Acts, but section 322(a) of the Revenue Act of 1926 amended section 301(a) of the Revenue Act of 1924, effective as of June 2, 1924, so as to impose the same rates prescribed by the Revenue Acts of 1918 and 1921. The rates imposed by the Revenue Act of 1926 are different from those prescribed in any of the prior Acts and are applicable to the estates of decedents dying after 10.25 a. m., eastern standard time, February 26, 1926, no change in its rates being made by any of the later Acts. An additional tax is imposed by the Revenue Act of 1932 which is the excess of the amount computed at the rates set forth in the Revenue Act of 1932 over the tax imposed by the Revenue Act of 1926. The rates set forth in the Revenue Act of 1932 are applicable to estates of decedents dying after 5 p. m., eastern standard time, June 6, 1932, and before May 11, 1934. The rates prescribed by the Revenue Act of 1934 for the computation of the additional tax are applicable to estates of decedents dying on or after May 11, 1934, and before August 31, 1935. The rates prescribed by the Revenue Act of 1935 for the computation of the additional tax are applicable to estates

of decedents dying on or after August 31, 1935. See "Table I" and "Table II," contained in the following article, for the various rates, and such article for an explanation of the use of the tables.

ART. 8. Computation of tax.—The tax imposed by the Revenue Act of 1926 and earlier Acts is computed on the value of the net estate at progressively graduated rates. The additional tax imposed by the Revenue Act of 1932, or by the Revenue Act of 1932 as amended, is obtained by subtracting the tax imposed by the Revenue Act of 1926 from an amount computed on the value of the appropriate net estate at the rates set forth either in the Revenue Act of 1932, or in that Act as amended by the Revenue Act of 1934 or 1935, as the case may require. The remainder resulting from such subtraction is the additional tax imposed. In certain cases arising after the enactment of the Revenue Act of 1924, the tax is reduced by authorized credits. (See article 9.) If credits are authorized, the tax computed at the rates prescribed by the Revenue Act of 1924, as amended, and the Revenue Act of 1926 and the additional tax computed under the provisions of the Revenue Act of 1932 or the Revenue Act of 1932 as amended, is the gross tax or the tax before reduction by credits. The difference between the gross tax and the credits is the net tax.

Table I shows the rates in effect under the Revenue Acts of 1935, 1934, 1932, and 1926. Table II shows the rates in effect prior to the enactment of the Revenue Act of 1926. Column (1) of Table I sets forth the total taxes imposed by the Revenue Act of 1926 and the Revenue Act of 1932, as amended by the Revenue Act of 1935 (that is, the tax imposed by section 301(a) of the Revenue Act of 1926 and the additional tax imposed by section 401 of the Revenue Act of 1932, as amended by section 201 of the Revenue Act of 1935) upon specified amounts, and the rates whereby such total taxes may be computed upon any excess over the amounts specified. Column (2) of Table I sets forth the total taxes imposed by the Revenue Act of 1926 and the Revenue Act of 1932, as amended by section 405 of the Revenue Act of 1934, upon specified amounts and the rates for the total taxes upon the excess of such amounts. Column (3) of Table I sets forth the total taxes imposed by the Revenue Act of 1926 and the Revenue Act of 1932, prior to the enactment of the Revenue Act of 1934, upon specified amounts and the rates for the total taxes upon the excess of such amounts. Column (4) of Table I sets forth the tax imposed by the Revenue Act of 1926 upon specified amounts and the rates for the tax upon the excess of such amounts. Columns (1) to (4), inclusive, of Table II set forth the tax on specified amounts and the rates for the tax upon the excess of such amounts, in effect for the periods shown in the headings. Column (A) of each table sets forth the specified amounts upon which the

tax is shown in the first subcolumn of each of the numbered columns. Column (B) of each table indicates the respective maximum limits to which the rates shown in the second subcolumn of each of the numbered columns are applicable.

The computation under each column must be based on the applicable net estate. The amount of the net estate computed for the purpose of the additional tax in accordance with the specific exemption authorized by the Revenue Act of 1932, or by that Act as amended, differs from the amount of the net estate computed for the purpose of the tax imposed by the Revenue Act of 1926 in accordance with the larger specific exemption authorized by such Act.

TABLE I (FOR COMPUTATION OF ESTATE TAX)

(A)	(B) Net estate not exceeding—	(1)		(2)		(3)		(4)	
		In effect on and after Aug. 31, 1935. (Tentative tax, 1932 Act as amended.) Total taxes imposed by 1926 Act and by 1932 Act as amended by 1935 Act	Rate of tax on excess over amount in column (A) Per cent	Tax on amount in column (A)	Rate of tax on excess over amount in column (A) Per cent	In effect from May 11, 1934, to Aug. 30, 1935, inclusive. (Tentative tax, 1932 Act as amended.) Total taxes imposed by 1926 Act and by 1932 Act	Rate of tax on excess over amount in column (A) Per cent	In effect after 10.25 a. m. eastern standard time, Feb. 26, 1926. Revenue Act of 1926	Rate of tax on excess over amount in column (A) Per cent
\$10,000	\$10,000	\$200	2	\$100	1	\$100	1	\$100	1
20,000	20,000	600	4	300	2	300	2	200	1
30,000	30,000	1,200	6	600	3	600	3	300	1
40,000	40,000	2,000	8	1,000	4	1,000	4	400	1
50,000	50,000	3,000	10	1,500	5	1,500	5	500	1
70,000	70,000	5,400	12	2,900	7	2,900	7	900	2
100,000	100,000	9,600	14	5,600	9	5,000	7	1,500	2
200,000	200,000	26,600	17	17,600	12	14,000	9	4,500	3
400,000	400,000	66,600	20	49,600	16	36,000	11	12,500	4
600,000	600,000	112,600	23	87,600	19	62,000	13	22,500	5
800,000	800,000	164,600	26	131,600	22	92,000	15	34,500	6
1,000,000	1,000,000	222,600	29	181,600	25	126,000	17	48,500	7
1,500,000	1,500,000	382,600	32	321,600	28	221,000	19	88,500	8
2,000,000	2,000,000	557,600	35	476,600	31	326,000	21	133,500	9
2,500,000	2,500,000	747,600	38	646,600	34	441,000	23	183,500	10
3,000,000	3,000,000	952,600	41	831,600	37	566,000	25	238,500	11
3,500,000	3,500,000	1,172,600	44	1,031,600	40	701,000	27	298,500	12
4,000,000	4,000,000	1,407,600	47	1,246,600	43	846,000	29	363,500	13
4,500,000	4,500,000	1,657,600	50	1,476,600	46	1,001,000	31	433,500	14
5,000,000	5,000,000	1,922,600	53	1,716,600	48	1,166,000	33	503,500	14
6,000,000	6,000,000	2,482,600	56	2,216,600	50	1,516,000	35	653,500	15
7,000,000	7,000,000	3,072,600	59	2,736,600	52	1,886,000	37	813,500	16
8,000,000	8,000,000	3,682,600	61	3,276,600	54	2,276,000	39	983,500	17
9,000,000	9,000,000	4,312,600	63*	3,836,600	56	2,686,000	41	1,163,500	18
10,000,000	10,000,000	4,962,600	65	4,416,600	58	3,116,000	43	1,353,500	19
20,000,000	20,000,000	11,662,600	67	10,416,600	60	7,616,000	45	3,353,500	20
50,000,000	50,000,000	32,362,600	70	28,416,600	60	21,116,000	45	9,353,500	20

TABLE II (FOR COMPUTATION OF ESTATE TAX)

(A) Net estate equal- ing—	(B) Net estate not ex- ceeding—	(1) In effect from 8.55 p. m., east- ern standard time, Feb. 24, 1919, to 10.25 a. m., eastern standard time, Feb. 26, 1928, Revenue Acts of 1918, 1921, and 1924	(2) In effect from Oct. 4, 1917, to 8.55 p. m., eastern standard time, Feb. 24, 1919, inclusive. Total taxes imposed by 1916 Act as amended by Act of Mar. 3, 1917, and imposed by 1917 Act	(3) In effect from Mar. 3, 1917, to Oct. 3, 1917, inclusive. Revenue Act of 1916 as amended by Act of Mar. 3, 1917	(4) In effect from Sept. 9, 1916, to Mar. 2, 1917, inclusive. Revenue Act of 1916 ^e
		Tax on amount in column (A)	Rate of tax on excess over amount in column (A)	Tax on amount in column (A)	Rate of tax on excess over amount in column (A)
			Per cent		Per cent
\$50,000	\$50,000	\$500	1		1
150,000	150,000	2,500	2	\$500	2
250,000	250,000	5,500	3	2,500	3
450,000	450,000	11,000	4	5,500	4
750,000	750,000	13,500	6	8,250	5
1,000,000	1,000,000	31,500	8	20,250	7
1,500,000	1,500,000	51,500	10	42,750	7½
2,000,000	2,000,000	101,500	12	61,500	9
3,000,000	3,000,000	161,500	14	106,500	9
4,000,000	4,000,000	301,500	16	151,500	10½
5,000,000	5,000,000	461,500	18	256,500	12
8,000,000	8,000,000	641,500	20	376,500	13½
10,000,000	10,000,000	1,241,500	22	511,500	15
		1,681,500	25	961,500	15
				1,261,500	15

'An illustration of the tables' use is as follows: The net estate for the tax imposed by the Revenue Act of 1926 amounts to \$1,240,000. By reference to Table I it will be seen that the specified amount in column (A) nearest to the value of the decedent's net estate but less than such value is \$1,000,000. The tax upon this amount as indicated in column (4) opposite \$1,000,000 in column (A) is \$48,500. Upon the remainder of the net estate, \$240,000, the tax is computed at the rate of 8 per cent set out in the second subcolumn of column (4) opposite \$1,000,000 in column (A). The tax on this remainder is, consequently, \$19,200. The following result is thus obtained:

Tax on-----	\$1, 000, 000=	\$48, 500
Tax on-----	240, 000=	19, 200
<hr/>		
Total-----	1, 240, 000	67, 700

Example (1) (estate subject to the tax imposed by the Revenue Act of 1926 and also to the additional tax imposed by the Revenue Act of 1932, as amended by the Revenue Act of 1935, and involving credit for State inheritance tax): A resident decedent died August 15, 1936, leaving a net estate of the value of \$210,000 after deducting the specific exemption of \$100,000 allowed by the Revenue Act of 1926. The tax shown in the first subcolumn of column (4) of Table I on a net estate equaling \$200,000 is \$4,500. As \$210,000 exceeds \$200,000 and falls below \$400,000, the tax on the excess of \$10,000 is computed at the rate of 4 per cent, the rate shown in the second subcolumn of column (4). The \$400 tax on such excess added to \$4,500 gives \$4,900, the gross tax computed under the Revenue Act of 1926. (Credit for gift tax is not involved in this example.) It will be assumed that the maximum amount of credit, \$3,920, or 80 per cent of \$4,900, is allowed for State inheritance tax. The net tax imposed by the Revenue Act of 1926 is the difference between \$4,900 and \$3,920, or \$980. For the purpose of the additional tax imposed by the Revenue Act of 1932, as amended by the Revenue Act of 1935, the decedent's net estate after deducting the specific exemption of \$40,000 is \$270,000. The total gross taxes imposed by the Revenue Act of 1926 and the Revenue Act of 1932, as amended by the Revenue Act of 1935, shown in the first subcolumn of column (1) on a net estate equaling \$200,000 is \$26,600. As \$270,000 exceeds \$200,000 and falls below \$400,000, the tax on the excess of \$70,000 is computed at 20 per cent, the rate shown in the second subcolumn of column (1). The tax on such excess is, consequently, \$14,000. The \$14,000 added to the \$26,600 gives \$40,600, the tax computed upon the net estate of \$270,000 at the rates set forth in the Revenue Act of 1935. The difference between the total gross taxes imposed by the Revenue Act of 1926 and the Revenue Act of 1932, as amended by the Revenue Act of 1935, \$40,600, and the gross tax, \$4,900, imposed by the Rev-

enue Act of 1926, is \$35,700, the gross additional tax imposed by the Revenue Act of 1932, as amended by the Revenue Act of 1935. As in this example no credit for gift tax is involved, the amount of the gross additional tax is the same as the net additional tax. The net tax imposed by the Revenue Act of 1926, \$980, added to the net additional tax imposed by the Revenue Act of 1932, as amended by the Revenue Act of 1935, \$35,700, results in a total net tax of \$36,680. A tabulation of this example is as follows:

Gross tax imposed by 1926 Act.....	\$4, 900	
Credit for gift tax imposed by 1924 and/or 1932 Act.....	0	
Gross tax, less credit for gift tax.....	4, 900	
Credit for estate, inheritance, legacy, or succession tax.....	3, 920	
Net tax imposed by 1926 Act.....		\$980
Total gross taxes imposed by 1926 Act and 1932 Act, as amended..	40, 600	
Gross tax imposed by 1926 Act.....	4, 900	
Gross additional tax imposed by 1932 Act, as amended.....	35, 700	
Credit for gift tax imposed by 1932 Act.....	0	
Net additional tax imposed by 1934 Act.....		35, 700
Total net tax.....		36, 680

Example (2) (estate subject only to the additional tax imposed by the Revenue Act of 1932, as amended by the Revenue Act of 1935): The gross estate of a resident decedent who died September 1, 1936, amounts to \$85,000. Deductions for administration expenses and claims against the estate are allowed in the amount of \$10,000, leaving \$75,000 before the deduction of the specific exemption authorized by the Revenue Act of 1926. As that exemption is \$100,000, it is apparent that the estate is not subject to the estate tax imposed by such Act. However, as the specific exemption authorized by the Revenue Act of 1932, as amended by the Revenue Act of 1935, is only \$40,000, the estate is subject to the additional estate tax imposed by the latter Act. For the purpose of such additional estate tax the net estate amounts to \$35,000. The tax shown in the first subcolumn of column (1) of Table I on a net estate equaling \$30,000 is \$1,200. As \$35,000 exceeds \$30,000 and falls below \$40,000, the tax on the excess of \$5,000 is computed at 8 per cent, the rate shown in the second subcolumn of column (1). The tax on such excess is, consequently, \$400. The \$400 added to the \$1,200 gives \$1,600, the tax computed upon the net estate of \$35,000 at the rates prescribed by the Revenue Act of 1935. Inasmuch as, in this example, the estate is not subject to the tax imposed by the Revenue Act of 1926, \$1,600 is the gross additional tax imposed by the Revenue Act of 1932, as amended by the Revenue Act of 1935. As credit for gift tax is not

involved in this example, the gross additional tax is the same as the net additional tax. It will be noted that credit for State or Territorial estate, inheritance, legacy, or succession taxes is not allowable against the additional tax imposed by the Revenue Act of 1932, or by that Act as amended.

Example (3) (estate subject to the tax imposed by the Revenue Act of 1926 and to the additional tax imposed by the Revenue Act of 1932, as amended by the Revenue Act of 1935, and involving credits for gift tax and for State inheritance taxes): The value of the gross estate of a resident decedent who died September 15, 1936, is \$400,000 and the value of the net estate for the purpose of the tax imposed by the Revenue Act of 1926 is \$225,000. The gross tax imposed by the Revenue Act of 1926 is \$5,500. (See illustration for use of table in computing the tax.) On December 1, 1934, the decedent, in contemplation of death, transferred certain real property to his daughter as a gift. The value of the real property as of the date of the gift, and as of the time of death, was \$155,000. As a result of this gift, a gift tax was paid in the amount of \$3,625, on a net gift of \$100,000 after exclusion of \$5,000 and deduction of \$50,000 specific exemption. (See Gift Tax Act of 1932.) As the value of the transferred real property is included in the decedent's gross estate, a credit for gift tax is allowed against the gross tax imposed by the Revenue Act of 1926 in such amount as does not exceed an amount which bears the same ratio to the gross tax, \$5,500, as the value at which the taxable gift (\$155,000 less the gift tax exclusion of \$5,000) is included in the gross estate bears to the value of the entire gross estate. (See article 9(a).) This ratio, which is ascertained by dividing \$150,000 by \$400,000, is 0.375. The credit for gift tax is, therefore, allowed in the amount which results from multiplying \$5,500 by 0.375, or \$2,062.50. The gross tax, \$5,500, less the credit for gift tax, is \$3,437.50. It will be assumed that State inheritance taxes paid equal or exceed the maximum amount of the credit allowable therefor (80 per cent of the difference between the gross tax and the gift tax credit). Accordingly, \$2,750 is allowed as the credit for State inheritance taxes. The difference between \$3,437.50 and \$2,750 is \$687.50, which is the net tax imposed by the Revenue Act of 1926.

The net estate for the purpose of the additional tax imposed by the Revenue Act of 1932, as amended by the Revenue Act of 1935, is \$285,000. The total gross taxes imposed by the Revenue Act of 1926 and the Revenue Act of 1932, as amended by the Revenue Act of 1935, computed in accordance with the table is \$43,600. The difference between such total gross taxes and \$5,500, the gross tax computed under the Revenue Act of 1926, is \$38,100, the gross additional tax imposed by the Revenue Act of 1932, as amended by the Revenue

Act of 1935. The credit for gift tax against such gross additional tax (1) can not exceed an amount which bears the same ratio to the gross additional tax as the value at which the taxable gift is included in the gross estate bears to the value of the entire gross estate (\$38,100, the gross tax, multiplied by 0.375, the factor, equals \$14,287.50), and (2) can not exceed the difference between the total amount of the gift tax and the credit for gift tax allowed against the gross tax computed under the Revenue Act of 1926. The credit here allowed is \$3,625 less \$2,062.50, or \$1,562.50. A tabulation of this example is as follows:

Gross tax imposed by 1926 Act.....	\$5,500.00	
Credit for gift tax imposed by 1932 Act.....	2,062.50	
Gross tax less credit for gift tax.....	3,437.50	
Credit for estate, inheritance, legacy, or succession tax....	2,750.00	
Net tax imposed by 1926 Act.....		\$687.50
Total gross taxes imposed by 1926 and 1932 Acts, as amended.....	43,600.00	
Gross tax imposed by 1926 Act.....	5,500.00	
Gross additional tax.....	38,100.00	
Credit for gift tax imposed by 1932 Act.....	1,562.50	
Net additional tax imposed by 1932 Act, as amended.....		36,537.50
Total net tax.....		37,225.00

CREDITS AGAINST ESTATE TAX

(GIFT TAX CREDIT)

SEC. 301. (b) (as amended by section 801 of the Revenue Act of 1932).

(1) If a tax has been paid under Title III of the Revenue Act of 1932 on a gift, and thereafter upon the death of the donor any amount in respect of such gift is required to be included in the value of the gross estate of the decedent for the purposes of this title, then there shall be credited against the tax imposed by subdivision (a) of this section the tax paid under such Title III with respect to so much of the property which constituted the gift as is included in the gross estate, except that the amount of such credit shall not exceed an amount which bears the same ratio to the tax imposed by subdivision (a) of this section as the value (at the time of the gift or at the time of the death, whichever is lower) of so much of the property which constituted the gift as is included in the gross estate, bears to the value of the entire gross estate.

(2) For the purposes of paragraph (1), the amount of tax paid for any year under Title III of the Revenue Act of 1932 with respect to any property shall be an amount which bears the same ratio to the total tax paid for such year as the value of such property bears to the total amount of net gifts (computed without deduction of the specific exemption) for such year.

SEC. 402. Revenue Act of 1932. (Pertaining to additional estate tax.) * * *

(b) (1) If a tax has been paid under Title III of this Act on a gift, and thereafter upon the death of the donor any amount in respect of such gift is required to be included in the value of the gross estate of the decedent for the purposes of this title, then there shall be credited against the tax imposed by section 401 of this Act the amount of the tax paid under such Title III with respect to so much of the property which constituted the gift as is included in the gross estate, except that the amount of such credit (A) shall not exceed an amount which bears the same ratio to the tax imposed by section 401 of this Act as the value (at the time of the gift or at the time of the death, whichever is lower) of so much of the property which constituted the gift as is included in the gross estate, bears to the value of the entire gross estate, and (B) shall not exceed the amount by which the gift tax paid under Title III of this Act with respect to so much of the property as constituted the gift as is included in the gross estate, exceeds the amount of the credit under section 301(b) of the Revenue Act of 1926, as amended by this Act.

(2) For the purposes of paragraph (1), the amount of tax paid for any year under Title III of this Act with respect to any property shall be an amount which bears the same ratio to the total tax paid for such year as the value of such property bears to the total amount of net gifts (computed without deduction of the specific exemption) for such year.

SEC. 404. Revenue Act of 1928.

Section 322 of the Revenue Act of 1924 (relating to the credit of gift tax against estate tax where the amount of the gift is required to be included in the gross estate of the decedent) is revived as of January 1, 1926 (the effective date of its repeal by the Revenue Act of 1926). Such section shall also be applied in the case of the estate tax imposed by Title III of the Revenue Act of 1926, in the same manner and to the same extent as in the case of the estate tax imposed by Title III of the Revenue Act of 1924.

SEC. 322. Revenue Act of 1924.

In case a tax has been imposed under section 319 upon any gift, and thereafter upon the death of the donor the amount thereof is required by any provision of Part I of this title to be included in the gross estate of the decedent then there shall be credited against and applied in reduction of the estate tax, which would otherwise be chargeable against the estate of the decedent under the provisions of section 301, an amount equal to the tax paid with respect to such gift; and in the event the donor has in any year paid the tax imposed by section 319 with respect to a gift or gifts which upon the death of the donor must be included in his gross estate and a gift or gifts not required to be so included, then the amount of the tax which shall be deemed to have been paid with respect to the gift or gifts required to be so included shall be that proportion of the entire tax paid on account of all such gifts which the amount of the gift or gifts required to be so included bears to the total amount of gifts in that year.

(INHERITANCE TAX CREDIT)

SEC. 301. (c) (as amended by section 802(a) of the Revenue Act of 1932). The tax imposed by subdivision (a) of this section shall

be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent). The credit allowed by this subdivision shall not exceed 80 per centum of the tax imposed by subdivision (a) (after deducting from such tax the credits provided by subdivision (b)), and shall include only such taxes as were actually paid and credit therefor claimed within four years after the filing of the return required by section 304, except that—

(1) If a petition for redetermination of a deficiency has been filed with the Board of Tax Appeals within the time prescribed in section 308, then within such four-year period or before the expiration of 60 days after the decision of the Board becomes final.

(2) If, under subdivision (b) of section 305 or subdivision (i) of section 308, an extension of time has been granted for payment of the tax shown on the return, or of a deficiency, then within such four-year period or before the date of the expiration of the period of the extension.

Refund based on the credit may (despite the provisions of section 319) be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest, except that where the overpayment was made prior to the enactment of the Revenue Act of 1932, then interest shall be allowed and paid on the amount refunded at the rate of 6 per centum per annum from the date of the overpayment to the date of such enactment.

NOTE.—Section 802(b) of the Revenue Act of 1932 reads as follows:

“(b) If any return required by section 304 of the Revenue Act of 1926 was filed more than three years before the enactment of this Act (except in cases where a petition for redetermination of a deficiency has been filed with the Board of Tax Appeals within the time prescribed in section 308) the credit for estate, inheritance, legacy, or succession taxes shall be determined as if this section had not been enacted.”

SEC. 402. Revenue Act of 1932. (Pertaining to additional estate tax.)

(a) The credit provided in section 301(c) of the Revenue Act of 1926, as amended (80 per centum credit), shall not be allowed in respect of such additional tax.

ART. 9. (a) Credit for gift tax.—The estate is entitled, with certain limitations, to credit against the estate tax for Federal gift tax paid in respect of property included in the gross estate.

(1) *Credit against estate tax imposed by the Revenue Act of 1926.*—In accordance with the provisions of section 301(b) of the Revenue Act of 1926, as amended by section 801 of the Revenue Act of 1932, credit for gift tax paid on gifts made by the decedent under the Gift Tax Act of 1932, or under that Act as amended, is allowed against the estate tax imposed by section 301(a) of the Revenue Act of 1926. Such credit can not exceed an amount which bears the same ratio to the gross tax computed

under the provisions of the Revenue Act of 1926 as the value of the property which was included for the purpose of the gift tax and also included in the gross estate bears to the value of the entire gross estate. In computing this ratio, the value of such property is the value determined for the purpose of the gift tax or the value determined for the purpose of the estate tax, whichever is the lower. In accordance with section 322 of the Revenue Act of 1924, as revived and extended by section 404 of the Revenue Act of 1928, credit for the entire amount of gift tax paid under the Revenue Act of 1924 in respect of property included in the gross estate is allowed against the estate tax imposed by section 301(a) of the Revenue Act of 1926.

(2) *Credit against additional estate tax imposed by the Revenue Act of 1932, or by that Act as amended.*—In accordance with the provisions of section 402 of the Revenue Act of 1932 credit for gift tax paid on gifts made by the decedent under the Gift Tax Act of 1932, or under that Act as amended, is allowed against the additional estate tax imposed by section 401(a) of the Revenue Act of 1932, or by that Act as amended. Such credit can not exceed an amount which bears the same ratio to the gross additional estate tax computed under the provisions of the Revenue Act of 1932, or that Act as amended, as the value of the property which was included for the purpose of the gift tax and also included in the gross estate bears to the value of the entire gross estate. In computing this ratio, the value of such property is the value determined for the purpose of the gift tax or the value determined for the purpose of the estate tax, whichever is the lower. Furthermore, the credit can not exceed the difference between the total amount of such gift tax paid and the amount of the credit therefor against the estate tax imposed by the Revenue Act of 1926. No credit for gift tax paid under the Revenue Act of 1924 is allowed against the additional estate tax imposed by section 401(a) of the Revenue Act of 1932, or that Act as amended.

Property included for the purpose of the gift tax and also included in the gross estate does not embrace any portion of the gift excluded under the provisions of subsection (b) of section 504 of the Gift Tax Act of 1932, and due allowance must be made for any such exclusions when computing the credit in accordance with the limitations set forth in the foregoing paragraphs (1) and (2). For example: A donor, in contemplation of death, transferred property then valued at \$100,000 to his five children, and paid the resulting gift tax. The property is thereafter included in his gross estate for the purpose of the estate tax at a value of \$80,000. As the total value of the prop-

erty at the time of the gift was \$100,000 and the amount of \$25,000 was excluded under the provisions of subsection (b) of section 504 of the Gift Tax Act of 1932, \$75,000, or three-fourths of the property, was included for the purpose of the gift tax. As the total value of the property determined for the purpose of the estate tax is \$80,000, the value of three-fourths thereof is \$60,000. Since \$60,000 is the lower of the two values (\$75,000 and \$60,000), this amount is used in computing the ratio.

If only a part of the property, included for the purpose of a gift tax imposed upon transfers made during a certain calendar year, is also included in the decedent's gross estate for the purpose of the estate tax, the gift tax paid in respect of such a part of the property is an amount which bears the same ratio to the total gift tax paid for such calendar year as the value of such part of the property bears to the total amount of the net gifts (computed without deduction of the specific exemption) for such year. For the purpose of computing this proportion the values finally determined for the purpose of the gift tax control, irrespective of the values determined for the purpose of the estate tax.

If all of the property, included for the purpose of a gift tax imposed upon transfers made during a certain calendar year, is included in the decedent's gross estate for the purpose of the estate tax, the gift tax paid in respect of the property included in the gross estate is the amount of the gift tax paid for that calendar year.

Example: On July 15, 1932, a resident donor gave his son a yacht valued at \$50,000 as a wedding present. On August 15, 1932, the decedent donated \$50,000 in cash to a charitable organization. On December 1, 1932, he transferred to his wife real property valued at \$100,000 in contemplation of death. The total amount of gifts for the year 1932 for the purpose of the gift tax is \$185,000, \$5,000 for each of the three donees being excluded from the total gifts under the provisions of the Gift Tax Act of 1932. After deducting \$50,000 specific exemption and \$45,000 for the gift to the charitable organization, the net gifts amount to \$90,000. The gift tax on the net gifts, \$3,125, was paid. The donor died on December 10, 1936, and the value of the real property transferred in contemplation of death is included in his gross estate for the purpose of the estate tax. The gift tax paid in respect of the property included in the gross estate is an amount which bears the same ratio to \$3,125 as \$95,000 bears to \$140,000, or \$2,120.54. Note that \$95,000 is the portion of the real property subject to gift tax (\$100,000 less the excluded \$5,000) and that \$140,000 is the amount of the net gifts computed without deduction of the specific exemption, \$50,000.

The credit is allowable even though the gift tax was paid by the executor after the decedent's death and the amount of the gift tax is deductible from the gross estate as a debt of the decedent.

For a further illustration of the computation of gift tax credit, see the last example in article 8.

(b) **Credit for estate, inheritance, legacy, or succession taxes.**—Under the provisions of section 301(c) of the Revenue Act of 1926, as amended, the estate is entitled, under certain conditions, to a credit against the Federal estate tax imposed by section 301(a) of the Revenue Act of 1926 for estate, inheritance, legacy, or succession taxes actually paid with respect to the estate of the decedent to any of the several States, Territories, or the District of Columbia. The credit is limited to 80 per cent of such Federal estate tax, after deduction of the credit allowed, if any, against such tax for Federal gift taxes paid. No credit for payment of estate, inheritance, legacy, or succession taxes is allowed against the additional tax imposed by the Revenue Act of 1932, or by that Act as amended. The credit is limited to the amount of estate, inheritance, legacy, or succession taxes paid to any State, Territory, or the District of Columbia in respect to property included in the gross estate of the decedent for Federal estate tax purposes.

The credit is also limited to such taxes as were actually paid and credit therefor claimed within four years after the filing of the return, except as otherwise provided in this paragraph. If a petition was filed with the Board of Tax Appeals for the redetermination of a deficiency within the time prescribed by section 308 (see article 76), the credit is limited to such taxes as were actually paid and credit therefor claimed within four years after the filing of the return or before the expiration of 60 days after the decision of the Board becomes final, whichever period is the longer. If the return was filed after, or less than three years before, the enactment of the Revenue Act of 1932 and an extension of time was granted for payment of the tax shown on the return or of a deficiency, the credit is limited to such taxes as were actually paid and credit therefor claimed within four years after the filing of the return or before the date of the expiration of the extension, whichever period is the longer. If the return was filed more than three years before the enactment of the Revenue Act of 1932, except in cases in which a petition for redetermination of a deficiency has been filed with the Board of Tax Appeals within the time prescribed by section 308, the credit is limited to such taxes as were actually paid and credit therefor claimed within three years after the filing of the return. Should the executor, in accordance with the provisions of section 305(e), as added by section 811(a) of the Revenue Act of 1932,

elect to postpone the payment of the Federal estate tax attributable to a reversionary or remainder interest, the credit allowable against the Federal estate tax attributable to such interest is limited to estate, inheritance, legacy, or succession taxes attributable to such interest as are actually paid to any State, Territory, or the District of Columbia and credit therefor claimed prior to the expiration of 60 days after the termination of the precedent interest. (See article 82(b).)

Refund based on the credit, despite the provisions of section 319, will be made if claim therefor is filed within the period provided for filing claim for credit. Such refunds will be made without interest unless the overpayment was made prior to the enactment of the Revenue Act of 1932, in which case interest upon the amount refunded is allowable on the amount of the refund at the rate of 6 per cent per annum from the date of the overpayment to the date of the enactment of the Revenue Act of 1932.

Before the Commissioner allows any credit for any estate, inheritance, legacy, or succession taxes, there must be submitted to him the following:

(1) Certificate of the proper officer of the taxing State, Territory, or District of Columbia showing: (a) the total amount of tax imposed (before adding interest and penalties and before allowing discount); (b) the amount of discount allowed; (c) the amount of penalties and interest imposed or charged; (d) the total amount actually paid in cash; and (e) the date of payment.

(2) A certificate of the above-mentioned officer showing whether (a) a claim for refund of such taxes or any part thereof is pending and (b) whether a refund of such taxes or any part thereof has been authorized. If any refund has been made, the date, the amount thereof, and a description of the property or interest in respect to which such refund was made must be shown in the certificate.

The evidence described above should be filed with the return, but if that is not convenient or possible, then it should be submitted to the investigating officer verifying the return, or, if the investigation of the estate has been completed, it should be transmitted to the Commissioner.

The Commissioner may require the submission of such additional proof as is deemed necessary to establish the right to the credit. For example, he may require an itemized list of the property in respect to which any such taxes were imposed, certified by the officer having custody of the records pertaining to such taxes for the State or Territory involved or the District of Columbia, and an affidavit of the executor stating whether any litigation has been instituted, or appeal taken, or any such action is designed or contemplated by him, or, to

his knowledge, by any beneficiary or other person, the final determination of which may affect the amount of such taxes.

If, subsequent to the allowance of a credit by the Commissioner, a refund is made of any such estate, inheritance, legacy, or succession taxes, the executor, or if the refund is made after the executor's discharge, then any person or persons to whom the refund is made, is required to advise the Commissioner of the date of the refund and the amount thereof, furnish the Commissioner with a description of the property or interest in respect to which the refund was made, and pay the Federal estate tax, if any, due as a result of such refund, together with interest.

GROSS ESTATE—VALUATION

SEC. 302 (as amended by section 404 of the Revenue Act of 1934). The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside the United States— * * *

(j) (as added by section 202(a) of the Revenue Act of 1935) If the executor so elects upon his return (if filed within the time prescribed by law or prescribed by the Commissioner in pursuance of law), the value of the gross estate shall be determined by valuing all the property included therein on the date of the decedent's death as of the date one year after the decedent's death, except that (1) property included in the gross estate on the date of death and, within one year after the decedent's death, distributed by the executor (or, in the case of property included in the gross estate under subdivision (c), (d), or (f) of this section, distributed by the trustee under the instrument of transfer), or sold, exchanged, or otherwise disposed of, shall be included at its value as of the time of such distribution, sale, exchange, or other disposition, whichever first occurs, instead of its value as of the date one year after the decedent's death, and (2) any interest or estate which is affected by mere lapse of time shall be included at its value as of the time of death (instead of the later date) with adjustment for any difference in its value as of the later date not due to mere lapse of time. No deduction under this title of any item shall be allowed if allowance for such item is in effect given by the valuation under this subdivision. Wherever in any other subdivision or section of this title or in Title II of the Revenue Act of 1932, reference is made to the value of property at the time of the decedent's death, such reference shall be deemed to refer to the value of such property used in determining the value of the gross estate. In case of an election made by the executor under this subdivision, then for the purposes of the deduction under section 303(a) (3) or section 303(b) (3), any bequest, legacy, devise, or transfer enumerated therein shall be valued as of the date of decedent's death with adjustment for any difference in value (not due to mere lapse of time or the occurrence or nonoccurrence of a contingency) of the property as of the date one year after the decedent's death (substituting the date of sale or ex-

change in the case of property sold or exchanged during such one-year period).

NOTE.—Section 202(b) of the Revenue Act of 1935 reads as follows:

“The amendment made by this section shall be effective only with respect to transfers of estates of decedents dying after the date of the enactment of this Act.”

ART. 10. **Valuation of property.**—(a) *General.*—The value of every item of property includible in the gross estate is the fair market value thereof at the time of the decedent's death; or, if the executor elects in accordance with the provisions of article 11, it is the fair market value thereof at the date therein prescribed or such value adjusted as therein set forth. The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. The fair market value of a particular kind of property includible in the gross estate is not to be determined by a forced sale price or by an estimate of what a whole block or aggregate would fetch if placed upon the market at one and the same time. Such value is to be determined by ascertaining as a basis the fair market value as of the applicable valuation date of each unit of the property. For example, in the case of shares of stock or bonds, such unit of property is a share or a bond. All relevant facts and elements of value as of the applicable valuation date should be considered in every case. Depreciation or appreciation in value subsequent to the valuation date are not relevant factors and will not be considered.

(b) *Real estate.*—The property should not be returned at the local assessed value thereof unless such value represents the fair market value as of the applicable valuation date. (See article 12 for the manner of listing and describing real estate.)

(c) *Stocks and bonds.*—The value of stocks and bonds, within the meaning of the statute, is the fair market value per share or bond on the applicable valuation date.

The value of stocks and bonds listed upon a stock exchange shall be obtained by taking the mean between the highest and lowest quoted selling prices upon the valuation date. If the valuation date is on a Sunday or a legal holiday, the transactions of the next previous business day will govern. If there were no sales on the valuation date, the value shall be determined by taking the mean between the highest and lowest sales upon the nearest date either before or after the valuation date, if within a reasonable period thereof. If the security was listed upon more than one exchange, the records of the exchange where the security is principally dealt in should be employed. In valuing listed stocks and bonds the executor should observe care to consult accurate records to obtain values as of the applicable valuation date.

If the securities are not listed upon an exchange, but are dealt in through brokers, or have a market, the value shall be determined by taking the mean between the highest and lowest selling prices as of the valuation date, or, if there were no sales on that date, of the nearest date either before or after the valuation date upon which sales were made, if within a reasonable period. If quotations are obtained from brokers, or evidence as to the sale of securities is obtained from the officers of the issuing companies, the executor should preserve in his files the letters furnishing such quotations or evidence of sale for inspection when the return is verified by an investigating officer.

In case securities are quoted on a bona fide bid and asked basis, and actual sales are not available, the mean between the bid and asked prices as of the applicable valuation date, or the nearest date thereto if within a reasonable time thereof, will be accepted as the value.

If the value of a security can not be determined by sales, or from bid and asked prices, as prescribed in the preceding provisions, then, in the case of corporate or other bonds, the value is to be arrived at by giving consideration to the soundness of the security, the interest yield, the date of maturity, and other relevant factors, and, in the case of shares of stock, upon the basis of the company's net worth, earning power, dividend-paying capacity, and all other relevant factors having a bearing upon the value of the stock. Complete financial and other data upon which the valuation is based should be submitted with the return.

In exceptional cases in which it is established by clear and convincing evidence that the value per bond or share of any security determined upon the basis of selling or bid and asked prices as herein provided does not reflect the fair market value thereof, other relevant facts and elements of value will be considered in determining the fair market value. The size of holdings of any security to be included in the gross estate is not a relevant factor and will not be considered in such determination.

The full value of securities pledged to secure an indebtedness of the decedent should be included in the gross estate. If the decedent had a trading account with the broker, all securities belonging to the decedent and held by the broker at the date of death must be included at their fair market value as of the applicable valuation date. Securities purchased on margin for the decedent's account and held by the broker should also be returned at their fair market value as of the applicable valuation date. The amount of the decedent's indebtedness to the broker or other person with whom securities were pledged will be allowed as a deduction from the gross estate in

accordance with articles 29, 36, and 52. (See article 12 for manner of listing and describing stocks and bonds.)

(d) *Interest in business.*—Care should be taken to arrive at an accurate valuation of any business in which the decedent was interested, whether as partner or proprietor. A fair appraisal as of the applicable valuation date should be made of all the assets of the business, tangible and intangible, including good will, and the business should be given a net value equal to the amount which a willing purchaser, whether an individual or corporation, would pay therefor to a willing seller in view of the net value of the assets and the demonstrated earning capacity. Special attention should be given to fixing an adequate figure for the value of the good will of the business in all cases in which the decedent has not agreed, for an adequate and full consideration in money or money's worth, that his interest therein shall pass at his death to his surviving partner or partners.

The factors hereinbefore stated relative to the valuation of other property, if applicable, will be considered in determining the valuation of an interest in a business held as proprietor or partner. All evidence bearing upon such valuation should be submitted with the return, including copies of reports in any case in which examinations of the business have been made by accountants, engineers, or any technical experts as of or near the applicable valuation date.

(e) *Notes, secured and unsecured.*—The value of notes, whether secured or unsecured, will be presumed to be the amount of unpaid principal, plus interest to the applicable valuation date, unless the executor establishes a lower value, or it is shown that they are worthless. However, items of interest should be separately listed on the estate tax return. Unless returned at face value, together with accrued interest, it must be shown by satisfactory evidence that the note is worth less than the unpaid amount because of the interest rate, or date of maturity, or other cause, or that it is uncollectible, either in whole or in part, by reason of the insolvency of the party or parties liable, or for other cause, and that the property, if any, pledged or mortgaged as security is insufficient to satisfy it.

(f) *Cash on hand or on deposit.*—The amount of cash belonging to the decedent, either in his possession at the date of death or in the possession of another, or deposited with a bank, should be included. If bank checks outstanding at the time of the decedent's death, given in discharge of bona fide, legal obligations of the decedent incurred for an adequate and full consideration in money or money's worth, and not as transfers coming within the provisions of section 302 (c) or (d) are subsequently honored by the bank and charged to the account, the balance remaining may be returned, provided the pay-

ments effected thereby are not claimed as deductions from the gross estate.

(g) *Household and personal effects*.—All household and personal effects of the decedent should be included at the price which a willing buyer would pay to a willing seller. A room by room itemization is desirable. All the articles should be named specifically, except that a number of articles contained in the same room, none of which has a value in excess of \$50, may be grouped. A separate value should be given for each article named. The executor may furnish, in lieu of an itemized list, a sworn statement, in duplicate, setting forth the aggregate value of the property as appraised by a competent appraiser, or appraisers of recognized standing and ability, or by a dealer or dealers in the class of personalty involved.

If, however, there is included among the household and personal effects, articles having marked artistic or intrinsic value of a total value in excess of \$2,000, such as jewelry, silverware, paintings, etchings, engravings, antiques, books, statuary, vases, oriental rugs, collections of coins and stamps, the appraisal of an expert or experts, under oath, should be filed with the return, Form 706, accompanied by the affidavit, in duplicate, of the executor as to the completeness of the itemized list of such property and of the disinterested character and the qualifications of the appraiser or appraisers.

If it is desired to effect distribution or sale of any portion of the household or personal effects in advance of the investigation by an officer of the Bureau of Internal Revenue, information to that effect should be given to the internal revenue agent in charge for the division wherein the decedent was domiciled at the date of his death, or if such household and personal effects were not located in such division, then to the Commissioner. The statement to the internal revenue agent in charge should be accompanied by a verified appraisal of such property and an affidavit of the executor as to the completeness of the list of such property and the qualifications of the appraiser, as already referred to, but such an appraisal and affidavit need not be in duplicate. If a personal inspection by an officer of the Bureau is not deemed necessary, the executor will be so advised. This procedure is designed to facilitate disposition of such property and to obviate future expense and inconvenience to the estate by affording the Commissioner an opportunity to make an investigation should one be deemed necessary prior to sale or distribution. (For location of the offices of the internal revenue agents in charge and the territory embraced in each division, see Appendix.)

If expert appraisers are employed care should be taken to see that they are reputable and of recognized competency to appraise the particular class of property involved. In the appraisal, books in sets by standard authors should be listed in separate groups. In listing

paintings having artistic value, the size, subject, and artist's name should be stated. In the case of oriental rugs, the size, make, and general condition should be given. Sets of silverware should be listed in separate groups. Groups or individual pieces of silverware should be weighed and the weights given in troy ounces. In arriving at the value of silverware, the appraisers should take into consideration its antiquity, utility, desirability, condition, and obsolescence.

(h) *Other property.*—Any property not specifically treated in this article should be valued in accordance with the rule laid down in subdivision (a) hereof. Live stock, farm machinery, harvested and growing crops should be itemized and the value of each item separately returned.

(i) *Annuities, life, remainder, and reversionary interests.*—(1) If the executor adopts the option set forth in article 11, any annuity, life, remainder, or reversionary interest includible in the gross estate should be valued as of the date of the decedent's death in accordance with the provisions of this article and then such value should be adjusted as explained in article 11 for any difference in value between the date of death and the applicable subsequent date due to causes other than mere lapse of time. If the executor does not adopt the option set forth in article 11, the value of any such interest should be computed as hereinafter prescribed without such further adjustment for any decrease or increase in the value of the property subsequent to the date of death.

(2) The value of an annuity contract issued by a company regularly engaged in the selling of contracts of that character is established through the sale by that company of comparable contracts.

(3) All other future payments are to be discounted upon the basis of compound interest at the rate of 4 per cent a year. If the time of payment or of payments is dependent upon the continuation of, or upon the termination of a life or of lives, the Actuaries' or Combined Experience Table of Mortality, as extended, and established actuarial principles are to be used in the computation of the present worth. For the purpose of the computation the age of a person is to be taken as the age of that person at his nearest birthday. Table A, a part of this article, gives factors applicable to a case in which only one life is involved. (See paragraphs (4) to (8), inclusive.) Table B, a part of this article, gives factors applicable to a case in which only a term-certain is involved. (See paragraphs (9) to (11), inclusive.) If the time of payment or of payments is dependent upon the continuation of, or termination of more than one life, or there is a term-certain concurrent with one or more lives, a special computation in accordance with the first two sentences of this paragraph is necessary. A case requiring a special computation may be stated to the Commissioner who will furnish the applicable factor, provided such request

is made sufficiently in advance of the due date of the return. Such request must fully disclose all relevant facts. The date of birth of each person, the duration of whose life may affect the value of the interest, should be established by affidavit.

(4) If the decedent had a remainder interest in property subject to the life estate of another, the present worth of the remainder interest at the time of death should be obtained by multiplying the value of the property at the time of death by the figure in column 3 of Table A opposite the number of years nearest to the actual age of the life tenant.

Example: The decedent was entitled to receive property worth \$50,000 upon the death of his elder brother, to whom the income for life had been bequeathed. The brother at the time of the decedent's death was 31 years 5 months old. By reference to Table A, it is found that the figure in column 3, opposite 31 years, is 0.31262. The present worth at the date of death of the remainder interest is, therefore, \$15,631 (\$50,000 multiplied by 0.31262).

(5) In case the decedent was entitled to receive an annuity of a definite amount during the lifetime of another person, payable at the end of annual periods, the present worth at the time of the decedent's death must be computed upon the basis of the value of a life annuity at the age of the other person. The amount payable annually should be multiplied by the figure in column 2 of Table A opposite the number of years in column 1 nearest to the actual age of the other person.

Example: The decedent received under the terms of his father's will an annuity of \$10,000 for the life of his elder brother. The brother at the decedent's death was 40 years 8 months old. By reference to Table A, the figure in column 2 opposite 41 years, the number nearest to the brother's actual age, is found to be 14.86102. The present worth of the annuity at the date of the decedent's death is therefore \$148,610.20.

(6) If an annuity under which the decedent was entitled to receive during the life of another payments at the end of each semi-annual, quarterly, or monthly period, the value of the annuity is to be determined by multiplying the aggregate amount to be paid within a year by the figure in column 2 of Table A opposite the number of years in column 1 nearest the actual age of the person whose life measures the duration of the annuity, and then multiplying the product by 1.01820 for monthly payments, by 1.01488 for quarterly payments, or by 1.00990 for semiannual payments.

Example: If, in the example given in paragraph (5), the annuity is payable in semiannual installments of \$5,000 at the end of each semiannual period, the aggregate annual amount, \$10,000, should be multiplied by the factor 14.86102, and the product should be multi-

plied by 1.00990. The present worth at the date of death of the annuity is, therefore, \$150,081.44 ($\$10,000 \times 14.86102 \times 1.00990$).

(7) If the first payment of an annuity for the life of an individual is to be paid at once, the value of the annuity is the sum of the first payment plus the present worth of a similar annuity, the first payment of which is not to be made until the end of the first period.

Example: The decedent was entitled to receive an annuity of \$50 a month payable during the life of another. The decedent died on the day a payment was due. At the date of his death the person whose life measures the duration of the annuity was then 50 years of age. The value of the annuity at the date of decedent's death is \$50 plus the product of $\$50 \times 12 \times 12.47032$ (see Table A) $\times 1.01820$ (see preceding paragraph), or \$7,668.38 [$\50 plus $(\$50 \times 12 \times 12.47032 \times 1.01820)$].

(8) If the decedent was entitled to receive the entire income of certain property during the life of another person, or was entitled to the use of nonincome-producing property during the life of another person, a hypothetical annuity at a rate of 4 per cent of the value of the property should be made the basis of the calculation.

Example: The decedent was entitled to receive the income from a fund of \$100,000 during the life of a person 41 years old. The value of a hypothetical annuity of \$4,000, dependent upon the life of such a person, is indicated by the table to be \$59,444.08 ($\$4,000$ multiplied by 14.86102).

(9) If the decedent was entitled to receive property at the end of a specified number of years after his death, Table B or an extension thereof should be used.

Example: The decedent is entitled to receive \$100,000 at the end of 30 years. The value of his right is the product of \$100,000 multiplied by 0.308319 the factor in column 3, Table B, opposite 30 years in column 1.

(10) If an annuity under which the decedent was entitled to receive during a term-certain payments at the end of each semiannual, quarterly, or monthly period, the value of the annuity is to be determined by multiplying the aggregate amount to be paid within a year by the applicable factor in column 2 of Table B and the product is to be multiplied by 1.01820 for monthly payments, by 1.01488 for quarterly payments, or by 1.00990 for semiannual payments.

Example: The decedent was an annuitant for a term-certain, being entitled to \$1,000 annually payable in installments of \$500 at the end of each semiannual period. A semiannual payment of \$500 had been made just before the death of the decedent and there remained 20 payments to be made over a period of 10 years. The value of the annuity as of the date of the decedent's death is the product of $\$500 \times 2 \times 8.11089$ (see Table B) $\times 1.01820$, or \$8,258.51.

(11) If the first payment of an annuity for a definite number of years is to be paid at once, the applicable factor is the product of the factor shown in Table B multiplied by 1.02154 for monthly payments, by 1.02488 for quarterly payments, by 1.02990 for semiannual payments, or by 1.04 for annual payments.

Example: The decedent was the beneficiary of an annuity of \$50 a month. On the day a payment was due, the decedent died. There were 300 payments to be made, including the payment due. The value of the annuity as of the date of decedent's death is the product of $\$50 \times 12 \times 15.62208$ (see Table B) $\times 1.02154$, or \$9,575.15 ($\$50 \times 12 \times 15.62208 \times 1.02154$).

TABLE A

Table, single life, 4 per cent, showing the present worth of an annuity, or a life interest, and of a reversionary interest

1	2	3	1	2	3
Age	Annuity, or present value of \$1 due at the end of each year during the life of a person of specified age	Reversion, or present value of \$1 due at the end of the year of death of a person of specified age	Age	Annuity, or present value of \$1 due at the end of each year during the life of a person of specified age	Reversion, or present value of \$1 due at the end of the year of death of a person of specified age
	<i>Annuity</i>	<i>Reversion</i>		<i>Annuity</i>	<i>Reversion</i>
0	\$14. 72829	\$0. 39507	51	\$12. 17919	\$0. 49311
1	17. 30771	. 29586	52	11. 88408	. 50446
2	18. 69578	. 24247	53	11. 58531	. 51595
3	19. 15901	. 22465	54	11. 28325	. 52757
4	19. 41226	. 21491	55	10. 97789	. 53931
5	19. 55301	. 20950	56	10. 66982	. 55116
6	19. 61731	. 20703	57	10. 35931	. 56310
7	19. 62502	. 20673	58	10. 04630	. 57514
8	19. 61097	. 20727	59	9. 73131	. 58726
9	19. 53413	. 21022	60	9. 41474	. 59943
10	19. 45359	. 21332	61	9. 09765	. 61163
11	19. 36943	. 21656	62	8. 78052	. 62383
12	19. 28184	. 21993	63	8. 46412	. 63600
13	19. 19065	. 22344	64	8. 14888	. 64812
14	19. 09590	. 22708	65	7. 83552	. 66017
15	18. 99764	. 23086	66	7. 52476	. 67212
16	18. 89569	. 23478	67	7. 21699	. 68397
17	18. 79010	. 23884	68	6. 91298	. 69565
18	18. 68070	. 24305	69	6. 61301	. 70719
19	18. 56751	. 24740	70	6. 31716	. 71857
20	18. 45038	. 25191	71	6. 02612	. 72976
21	18. 32932	. 25656	72	5. 74003	. 74077
22	18. 20416	. 26138	73	5. 45928	. 75157
23	18. 07471	. 26636	74	5. 18402	. 76215
24	17. 94097	. 27150	75	4. 91463	. 77251
25	17. 80274	. 27682	76	4. 65125	. 78264
26	17. 65984	. 28231	77	4. 39383	. 79254
27	17. 51224	. 28799	78	4. 14286	. 80220
28	17. 35968	. 29386	79	3. 89858	. 81159
29	17. 20225	. 29991	80	3. 66071	. 82074
30	17. 03961	. 30617	81	3. 42900	. 82965
31	16. 87176	. 31262	82	3. 20258	. 83836
32	16. 69846	. 31929	83	2. 98024	. 84691
33	16. 51964	. 32617	84	2. 76106	. 85534
34	16. 33503	. 33327	85	2. 54366	. 86371
35	16. 14437	. 34060	86	2. 32795	. 87200
36	15. 94755	. 34817	87	2. 11384	. 88024
37	15. 74427	. 35599	88	1. 90115	. 88842
38	15. 53421	. 36407	89	1. 69107	. 89650
39	15. 31722	. 37241	90	1. 48540	. 90441
40	15. 09295	. 38104	91	1. 28432	. 91214
41	14. 86102	. 38996	92	1. 09024	. 91961
42	14. 62122	. 39918	93	. 90647	. 92667
43	14. 37356	. 40871	94	. 73687	. 93320
44	14. 11860	. 41852	95	. 58435	. 93906
45	13. 85713	. 42857	96	. 46182	. 94378
46	13. 58958	. 43886	97	. 36698	. 94742
47	13. 31698	. 44935	98	. 24038	. 95229
48	13. 03942	. 46002	99	. 00000	. 96154
49	12. 75716	. 47088			
50	12. 47032	. 48191			

TABLE B

Table showing the present worth at 4 per cent of an annuity for a term-certain, and of a reversionary interest postponed for a term-certain

1	2	3	1	2	3
Number of years	Present worth of an annuity of \$1, payable at the end of each year, for a certain number of years	Present worth of \$1, payable at the end of a certain number of years	Number of years	Present worth of an annuity of \$1, payable at the end of each year, for a certain number of years	Present worth of \$1, payable at the end of a certain number of years
	<i>Annuity</i>	<i>Reversion</i>		<i>Annuity</i>	<i>Reversion</i>
1	\$0. 96154	\$0. 961538	16	\$11. 65229	\$0. 533908
2	1. 88609	. 924556	17	12. 16567	. 513373
3	2. 77509	. 888996	18	12. 65929	. 493628
4	3. 62989	. 854804	19	13. 13394	. 474642
5	4. 45182	. 821927	20	13. 59032	. 456387
6	5. 24214	. 790314	21	14. 02916	. 438834
7	6. 00205	. 759918	22	14. 45111	. 421955
8	6. 73274	. 730690	23	14. 85684	. 405726
9	7. 43533	. 702587	24	15. 24696	. 390121
10	8. 11089	. 675564	25	15. 62208	. 375117
11	8. 76047	. 649581	26	15. 98277	. 360689
12	9. 38507	. 624597	27	16. 32958	. 346816
13	9. 98565	. 600574	28	16. 66306	. 333477
14	10. 56312	. 577475	29	16. 98371	. 320651
15	11. 11839	. 555265	30	17. 29203	. 308319

ART. 11. **Optional valuation date.**—In general, the object of subdivision (j) of section 302 is to make provision whereby the amount of tax otherwise payable may be lessened when, within the year following the decedent's death, the gross estate has suffered a shrinkage in its aggregate value.

If the decedent died after August 30, 1935, the executor may, by an election upon his return, Form 706, if filed within the time prescribed by law or prescribed by the Commissioner in pursuance of law, have the property which was included in the gross estate on the date of the decedent's death valued as of the applicable dates, as follows:

(1) Any property distributed, sold, exchanged, or otherwise disposed of within one year after the decedent's death, valued as of the date of such distribution, sale, exchange, or other disposition, whichever first occurs;

(2) Any property not distributed, sold, exchanged, or otherwise disposed of within such 1-year period, valued as of the date one year after the date of the decedent's death;

(3) Any property, interest, or estate which is affected by mere lapse of time, valued as of the date of decedent's death; except that an adjustment is to be made for any difference in its value, not due to such lapse of time, as of the date one year after the date of decedent's death, or as of the date of its distribution, sale, exchange, or other disposition, whichever date first occurs

Property "distributed" is limited to distributions thereof by the executor, or by the trustee in the case of property included in the gross estate under subdivision (c), (d), or (f) of section 302, as amended. Distribution may be effected by the entry of the order or decree of distribution, or, if there is no such order or decree, by the segregation or separation of the property from the estate or the trust, or by the actual paying over or delivery of the property to the person entitled thereto by the will, or under the law, or by the terms of the trust.

The sale, exchange, or other disposition, to which subdivision (j) refers, may be one made by the executor, or by the trustee of property included in the gross estate under subdivision (c), (d), or (f) of section 302, as amended, or by any other person to whom the property had not been distributed by the executor or by such a trustee, or to whom it had not passed from the gross estate as the result of a sale, exchange, or other disposition thereof, as, for example, a sale, exchange, or other disposition by an heir, devisee, donee or grantee to whom the decedent in his lifetime transferred the property, or by the survivor of the decedent if the property had been held by them subject to the right of survivorship.

Property, in the case of a sale, exchange, or other disposition thereof within the 1-year period, is to be valued as of the date when it ceases to form a part of the gross estate, that is, the date when the title passes as the result of its sale, exchange, or other disposition. The terms "distributed," "sold," "exchanged," "or otherwise disposed of" comprehend all possible ways by which property may be separated or passed from the gross estate. Thus, money on hand at decedent's death which is thereafter used in the payment of the funeral expenses, or in settlement of claims against the estate, or is invested, falls within the term "otherwise disposed of."

The property to be valued as of one year after the date of decedent's death, or as of date of decedent's death, or as of some intermediate date, is the property included in the gross estate on the date of the decedent's death. As property and its value are separate and distinct, the former denoting legal rights, the latter the monetary measure of such rights, and as subdivision (j) treats of the two separately, it will be necessary in every case first to determine what property constituted the gross estate at decedent's death. Subdivisions of section 302, as amended, other than subdivision (j), supply the information necessary to that determination, subdivision (j) being, in the main, confined to the date or dates as at which the value is to be ascertained.

Interest-bearing obligations, such as bonds and notes, embody two promises, one to pay principal and the other to pay interest, and both promises are a part of the gross estate at the death of the dece-

dent, if the obligation was then owned by him, or had been previously so transferred by him, or at his death there was vested in him any such right or power in or with respect to the obligation as to bring it within any of the other subdivisions of section 302, as amended. If the valuation date is that of decedent's death, the principal of the obligation and interest then accrued and unpaid thereon are to be valued as of that date. If the valuation date is subsequent to death, the principal and interest then accrued and unpaid are to be valued as of that date. The valuation date of any part payment of principal or of any installment of interest, made between decedent's death and the date as at which the obligation is to be valued, will be the date of such payment. Like rules will govern, so far as applicable, when any other obligation is involved, as, for example, one calling for the payment of rent or a royalty. Thus, in the case of rent, if the realty and the obligation to pay the rent reserved were parts of the gross estate at the time of decedent's death, the value of the former must be determined as of the applicable valuation date, and also the value of the rent then accrued and unpaid reserved by the latter. The valuation date of any rent paid in the interim pursuant to the rental obligation will be the date of its payment.

As in the case of bonds and notes, the interest accrued and unpaid upon a judgment on the date as of which the judgment is to be valued is to be included in the valuation. The valuation date of any part payment of the judgment, or of any interest thereon (without regard to whether earned before or after decedent's death), made between decedent's death and the date as of which the judgment is to be valued, will be the date of such payment.

When corporate stock is a part of the gross estate at decedent's death, and a dividend in partial liquidation is thereafter paid on or before the date as of which the stock is to be valued, the valuation date of such dividend will be the date of its payment. Similarly, a dividend paid within the same period out of earnings, whether the earnings are made or accumulated prior or subsequent to decedent's death, will be valued as of the date of its payment. Earnings of the corporation neither declared as a dividend nor paid between decedent's death and the valuation date of the stock, will be reflected in the value of the stock. But a dividend declared prior to the valuation date of the stock and payable subsequent thereto will not be so reflected if the stock is selling "ex dividend" on such valuation date, but is to be valued as of that date.

Differing from payments of principal and interest in the case of bonds and notes, those made upon a judgment are not pursuant to a promise but to an obligation imposed by law, which obligation, in its

totality, is a part of the gross estate at decedent's death if coming within any of the other subdivisions of section 302, as amended. So, too, liquidating dividends and dividends paid from earnings are not pursuant to a promise but are referable to legal rights inherent in stock ownership.

By way of illustrating the operation of subdivision (j), there is given the following example in which the death of the decedent will be taken to have occurred December 1, 1935:

Description	Valuation date	Value at valuation date	Value at date of death
Improved real estate—not disposed of within year following decedent's death.....	Dec. 1, 1936	\$30,000	\$35,000
Rents accrued but unpaid under lease antedating decedent's death.....	Dec. 1, 1936	900	500
Rent paid Jan. 1, 1936.....	Jan. 1, 1936	600	-----
Bonds sold June 1, 1936.....	June 1, 1936	59,400	60,000
Interest accrued and unpaid thereon.....	June 1, 1936	400	400
Interest paid Apr. 1, 1936.....	Apr. 1, 1936	1,200	-----
Corporate stock—distributed to legatee Nov. 1, 1936.....	Nov. 1, 1936	100,000	200,000
Cash dividend paid upon such stock Aug. 1, 1936.....	Aug. 1, 1936	100,000	-----
Bonds matured and paid Oct. 1, 1936.....	Oct. 1, 1936	12,000	12,000
Interest accrued.....	-----	-----	80
Interest paid at maturity.....	Oct. 1, 1936	240	-----
Interest paid Apr. 1, 1936.....	Apr. 1, 1936	240	-----
Corporate stock—not disposed of within year following decedent's death, and upon which no dividend was paid in that period.....	Dec. 1, 1936	50,000	100,000
Total value of gross estate pursuant to the election.....	-----	354,980	-----
Total value of gross estate as of date of decedent's death.....	-----	-----	407,980

Properties, interests, or estates which are affected by mere lapse of time include patents, estates for the life of a person other than the decedent, remainders, reversions, and other like properties, interests, or estates. The phrase "affected by mere lapse of time" has no reference to obligations for the payment of money, whether or not interest-bearing, the value of which changes with the passing of time. However, such an obligation, like any other property, may become affected by lapse of time when made the subject of a bequest or transfer which itself is creative of an interest or estate so affected.

The date of valuation of any property, interest, or estate so affected is, as prescribed in subdivision (j), the date of decedent's death, but with an adjustment to be made of the value then obtaining, which adjustment, while disregarding any later increase or decrease in value due solely to lapse of time, adds to or subtracts from the value at death any difference between that value and the value as of the date one year after decedent's death, or the applicable intermediate date, if, and to the extent that, such difference was due to a cause or causes other than lapse of time. Accordingly, in the valuation of any prop-

erty, interest, or estate affected by lapse of time, the difference between its value at decedent's death and its value as of the later date must be analyzed to determine the portion of such difference attributable to other cause or causes, and that portion only is to be applied in adjusting the value as of the date of the decedent's death. If, for example, the decedent owned a patent which on the date of his death had an unexpired term of 10 years and a value of \$100,000, and if the patent was sold 6 months after the decedent's death, at which time, because of the lapse of time and other causes, only \$65,000 was realized therefor, the value would be determined as follows:

Value of patent on date of decedent's death.....	\$100, 000
Difference between value on date of death and date of sale (\$100,000 minus \$65,000)	\$35, 000
Portion of such difference due to the 6 months elapsing between date of death and date of sale (one-half of 10 per cent of \$100,000)	5, 000
Portion of difference due to causes other than lapse of time.....	30, 000
Adjusted value of patent.....	70, 000

Or, to give another example, it may be supposed that the decedent was entitled to receive property which, at the time of his own death, was worth \$50,000 upon the death of another person who was entitled to the income therefrom for life and who was 31 years old at the time of the decedent's death. The value at decedent's death of his remainder interest would, as explained in article 10(i) of these regulations, be \$15,631, and if, due to economic conditions, the property declined in value and became worth \$40,000 one year after the date of decedent's death, the value of the remainder interest would be determinable in the following manner:

Value of remainder interest at decedent's death (\$50,000 times factor (0.31262) shown opposite age 31 in column 3 of Table A, article 10)	\$15, 631. 00
Value of remainder interest one year after decedent's death (\$40,000 times factor (0.31929) shown in Table A, for age 32)	12, 771. 60
Net difference due in part to decline in value of the property and in part to increase in the value of the remainder interest due to lapse of time.....	2, 859. 40
Elimination of the increase due to lapse of time (\$50,000 times the difference between the factor for age 32 and the factor for age 31, or 0.00667)	333. 50
Portion of the difference in value due to the decline in value of the property.....	3, 192. 90
Value of remainder interest at decedents' death.....	15, 631. 00
Less portion of difference not due to lapse of time.....	3, 192. 90
Adjusted value of remainder interest.....	12, 438. 10

(The amount of the adjustment may be computed more readily by multiplying the decline in the value of the property (\$10,000) by the factor (0.31929) applicable to the later date.)

Deductions authorized under section 303 are limited to the extent that allowance thereof is not, in effect, given in the valuing of the gross estate. Property passing by decedent's will, or passing by a transfer made by the decedent in his lifetime (if the transfer was such as to require the property transferred to be included in the gross estate) to or for any such public, charitable, or religious uses as are described in section 303(a)(3) or in section 303(b)(3), is deductible at its value as of the date of the decedent's death, subject, however, to adjustment for any difference in value one year after such death, or at the date of the sale or exchange in the case of property sold or exchanged during such 1-year period. But no such adjustment may take into account any difference in value due to lapse of time or to the occurrence or nonoccurrence of a contingency.

The election is available to the executor only at the time the return is filed, and only if the return is filed within 15 months from the decedent's death, or within the period of an extension of time for filing granted under the provisions of article 68 or 69 of these regulations. The election applies to all the property included in the gross estate on the date of the decedent's death. It can not be applied only to a portion of such property. The election, if exercised, can not be rescinded.

In every case where the election is exercised, the return, Form 706, must set forth (1) an itemized description of all property included in the gross estate on the date of the decedent's death, together with the value of each item as of that date, (2) an itemized disclosure of all distributions, sales, exchanges, and other dispositions of any of the property during the 1-year period after the decedent's death, together with the dates thereof, and (3) the value of each item of property determined in accordance with the provisions of subdivision (j). The amount of any income accrued and unpaid at the date of the decedent's death on each item of principal, the amount of any income collected or otherwise realized thereon after the decedent's death and prior to the date as of which the item of principal is to be valued, and the amount of any income accrued and unpaid thereon at such subsequent valuation date, shall be separately shown. All the information indicated by Form 706 must be supplied. Statements as to distributions, sales, exchanges, and other dispositions of the property within the 1-year period must be supported by evidence. If the court makes an order or decree of distribution during that period, a certified copy thereof must be submitted as part of the evidence. The Commissioner may require the submission of such additional evidence as is deemed necessary.

ART. 12. Description of property listed on return.—In listing upon the return the property constituting the gross estate (other than household and personal effects, as to which see article 10(*g*)), the description thereof should be such that the property may be readily identified. Thus, a legal description should be given of each parcel of real estate, and if located in a city the name of street and number, its area, and, if improved, a short statement of the character of the improvements. Description of bonds should include number held, principal amount, name of obligor, date of maturity, rate of interest, date or dates on which interest is payable, series number if there is more than one issue, the exchange upon which listed, or the principal business office of the corporation, if unlisted. Description of stocks should include number of shares, whether common or preferred, and, if preferred, what issue thereof, par value, quotation at which returned, exact name of corporation, and, if the stock is unlisted, the location of the principal business office and State in which incorporated and the date of incorporation. If a listed security, state principal exchange upon which sold. Description of notes should include name of maker, date on which given, date of maturity, amount of principal, amount of principal unpaid, rate of interest and whether simple or compound, date to which interest has been paid and amount of unpaid interest. Description of land contracts received should include name of vendee, date of contract, description of property, sale price, initial payment, amounts of installment payments, unpaid balance of principal and accrued interest, interest rate and date prior to decedent's death to which interest had been paid.

Description of bank accounts should disclose name and address of depository, amount on deposit, whether a checking, savings, or a time-deposit account, rate of interest, if any payable, amount of interest accrued and payable, and serial number. Description of life insurance should give the name of the insurer, number of policy, name of the beneficiary, and the amount of the proceeds. For every policy of life insurance listed on the return, the executor must procure a statement by the company on Form 712 and file it with the collector. (See article 28.) In describing an annuity, the name and address of the grantor of the annuity should be given, or if payable out of a trust or other funds such a description as will fully identify it. If payable for a term of years, the duration of the term and the date on which it began should be given, and if payable for the life of a person other than the decedent, the date of birth of such person should be stated. Judgments should be described by giving the title of the cause and the name of the court in which rendered, date of judgment, name and address of judgment debtor, amount of judgment, rate of interest to which subject, whether any payments have been made thereon, and, if so, when and in what amounts.

GROSS ESTATE—GENERAL

SEC. 302 (as amended by section 404 of the Revenue Act of 1934):
The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside the United States—

(a) To the extent of the interest therein of the decedent at the time of his death; * * *

ART. 13. **Property of decedent at time of death.**—It is designed by the foregoing provision of the statute that there shall be included in the gross estate all property of the decedent, whether real or personal, tangible or intangible, the beneficial ownership of which was in the decedent at the time of his death, except real property situated outside the United States.

If the decedent died prior to 10.25 a. m., eastern standard time, February 26, 1926, the test which determines that a given interest is to be included in the gross estate under the provisions of subdivisions (a) of the corresponding sections of the Revenue Acts prior to that of 1926 is whether the property, after death, shall be subject to: (1) Payment of the charges against the estate; (2) payment of the expenses of administration; and (3) distribution as a part of the estate. This test is not applicable if the decedent died subsequent to the effective date of the Revenue Act of 1926.

All real property situated in the United States and owned by the decedent at the date of his death should be included in the gross estate, whether the decedent was a resident or a non-resident, a citizen or an alien, and whether the property came into the possession and control of the executor or administrator or passed directly to heirs or devisees. If the decedent was a resident (or a nonresident citizen who died after the enactment of the Revenue Act of 1934), all personal property owned by him should be included, wherever situated. If the decedent was a nonresident alien (or, regardless of citizenship, was a nonresident who died prior to the enactment of the Revenue Act of 1934), so much of his personal property as had its situs in the United States at the time of his death should be included, and the value of his entire gross estate, wherever situated, should be disclosed, if deductions are claimed. (See articles 52 to 54.) As to the situs of the personal property of nonresident alien decedents, or nonresident decedents, regardless of citizenship, who died prior to the enactment of the Revenue Act of 1934, see article 50.

The value of a vested remainder should be included in the gross estate. Nothing should be included, however, on account of a contingent remainder in the case the contingency does not happen in the lifetime of the decedent, and the interest consequently lapses at his death. Nor should anything be included on account of an interest

or an estate limited for the life of the decedent. There should be included, however, the value of a reversionary interest retained by the decedent, which reverts upon the termination of a particular estate or in case of his prior death passes to others. There should also be included the value of an annuity payable to, or an interest or an estate vested in, the decedent for the life of another person who survives him. For rules in valuing such remainders, annuities, and interests or estates *pur autre vie*, see article 10(i).

A cemetery lot owned by the decedent is part of his gross estate, but its value is limited to the salable value of such part of it as is not designed for the interment of the decedent or members of his family. Property subject to homestead or other exemptions under local law must be included in the gross estate. Notes or other claims held by the decedent should be included, though they are canceled by his will. As to the valuation of notes and claims, see article 10(e).

Outstanding dividends and accrued interest should be included in the gross estate. Dividends on either common or preferred stock should be separately listed on the return if declared prior to the applicable valuation date, and not reflected in the market value of the stock on that date. Thus, dividends both declared and payable to holders of record on a date prior to the valuation date, should be separately included, provided the stock is valued "ex dividend" on the valuation date.

Example: A 5 per cent dividend upon stock is declared March 1, payable on April 1, to stockholders of record on March 15. If the applicable valuation date is March 10, and the market value on that day was 90, the value to be returned for both stock and dividend is 90, the dividend being reflected in the market value of the stock. If the applicable valuation date is March 20, the dividend is not reflected in the market value, and must be returned in addition to the market value of the stock on March 20.

As to the inclusion of dividends, interest, and other income paid after the date of the decedent's death and before the subsequent valuation date, in case the executor exercises the option prescribed by section 302(j), see article 11.

Various statutory provisions, which exempt bonds, notes, bills, and certificates of indebtedness of the Federal Government or its agencies and the interest thereon from taxation, are not applicable to the estate tax, since this tax is an excise tax on the transfer, and is not a tax on the property transferred. However, in case the decedent was a nonresident alien not engaged in business in the United States, bonds, notes, and certificates of indebtedness of the United States, beneficially owned by such alien, should not be included.

GROSS ESTATE—DOWER AND CURTESY

SEC. 302 (as amended by section 404 of the Revenue Act of 1934). The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside the United States— * * *

(b) To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower, curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy; * * *

ART. 14. Dower and curtesy.—The provision of section 302(b) includes dower and curtesy and all interests created by statute in lieu thereof, although the estate or interest so created may differ in character from dower or curtesy. The effect of the provision is to require the inclusion of the full value of the property, without deduction of the value of the interest of the surviving husband or wife, and without regard to the time when the right to such an interest arose. This provision does not apply to the estate of any decedent dying after September 8, 1916, and prior to 6.55 p. m., February 24, 1919 (the effective date of Title IV of the Revenue Act of 1918), unless the property has its situs in a jurisdiction wherein dower, curtesy, or the statutory interest in lieu thereof is subject to the payment of charges against the estate, the expenses of its administration, and is subject to distribution as part of the estate, or unless there has been an election to take property devised or bequeathed in lieu of dower, curtesy, or such statutory interest, and the property so taken has its situs in a jurisdiction by the laws of which it is subject to the payment of such charges and expenses, and to distribution as a part of the estate.

GROSS ESTATE—TRANSFERS BY DECEDENT IN HIS LIFETIME

SEC. 302 (as amended by section 404 of the Revenue Act of 1934). The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside the United States— * * *

(c) (as amended by Joint Resolution of March 3, 1931, Public, No. 131, Seventy-first Congress, and by section 803(a) of the Revenue Act of 1932) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full con-

sideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;

(d) (as amended by section 401 of the Revenue Act of 1934, and by section 805(a) of the Revenue Act of 1936) (1) To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona-fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished in contemplation of decedent's death.

(2) For the purposes of this subdivision the power to alter, amend, or revoke shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, or revocation takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such purpose if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given, or the power exercised, on the date of his death.

(3) The relinquishment of any such power, not admitted or shown to have been in contemplation of the decedent's death, made within two years prior to his death without such a consideration and affecting the interest or interests (whether arising from one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggregate value, at the time of such death, in excess of \$5,000, then, to the extent of such excess, such relinquishment or relinquishments shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title; * * *

(i) If any one of the transfers, trusts, interests, rights, or powers, enumerated and described in subdivisions (c), (d), and (f) of this section is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

SEC. 303. (d) (as amended by section 804 of the Revenue Act of 1932)
* * * For the purposes of this title, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in

lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth".

SEC. 302. (c) (as originally enacted) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Where within two years prior to his death but after the enactment of this Act and without such a consideration the decedent has made a transfer or transfers, by trust or otherwise, of any of his property, or an interest therein, not admitted or shown to have been made in contemplation of or intended to take effect in possession or enjoyment at or after his death, and the value or aggregate value, at the time of such death, of the property or interest so transferred to any one person is in excess of \$5,000, then, to the extent of such excess, such transfer or transfers shall be deemed and held to have been made in contemplation of death within the meaning of this title. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death but prior to the enactment of this Act, without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;

Joint Resolution of March 3, 1931 (Public, No. 131, Seventy-first Congress):

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of subdivision (c) of section 302 of the Revenue Act of 1926 is amended to read as follows:

"To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, including a transfer under which the transferor has retained for his life or any period not ending before his death (1) the possession or enjoyment of, or the income from, the property or (2) the right to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth."

SEC. 302. (d) (as originally enacted) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. The relinquishment of any such power, not admitted or shown to have been in contemplation of the decedent's death, made within two years prior to his death but after the enactment of this Act without such a consideration and affecting the interest or interests (whether arising from

one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggregate value, at the time of such death, in excess of \$5,000, then, to the extent of such excess, such relinquishment or relinquishments shall be deemed and held to have been made in contemplation of death within the meaning of this title;

SEC. 401. Revenue Act of 1934.

Section 302(d) of the Revenue Act of 1926 is amended to read as follows:

"(d) (1) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth.

"(2) For the purposes of this subdivision the power to alter, amend, or revoke shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, or revocation takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such purpose if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given, or the power exercised, on the date of his death.

"(3) The relinquishment of any such power, not admitted or shown to have been in contemplation of the decedent's death, made within two years prior to his death without such a consideration and affecting the interest or interests (whether arising from one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggregate value, at the time of such death, in excess of \$5,000, then, to the extent of such excess, such relinquishment or relinquishments shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;"

SEC. 805. Revenue Act of 1936.

(a) Section 302(d) (1) of the Revenue Act of 1926, as amended, is amended to read as follows:

"(d) (1) To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona-fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished in contemplation of decedent's death."

(b) Except in the case of transfers made after the date of the enactment of this Act, no interest of the decedent of which he has made a

transfer shall be included in the gross estate under such section 302(d) (1) unless it was includible under such section before its amendment by this section.

ART. 15. Transfers during life.—The following classes of transfers made by the decedent prior to his death, whether in trust or otherwise, if not constituting bona fide sales for an adequate and full consideration in money or money's worth, are subject to the tax: (1) transfers in contemplation of death (see article 16); (2) transfers to the extent that title remained in the decedent at the time of his death and the passing thereof was conditioned upon his death (see article 17); (3) transfers under which the decedent reserved or retained (in whole or in part) the use, possession, rents, or other income or enjoyment of the transferred property, for his life, or for a period not ascertainable without reference to his death, or for a period of such duration as to evidence an intention that it should extend to his death; including also the reservation or retention of the use, possession, rents, or other income, the actual enjoyment of which was to await the termination of a transferred precedent interest or estate (see article 18); (4) transfers under which the decedent retained the right, either alone or in conjunction with another person or persons, to designate who should possess or enjoy the property or the income therefrom (see article 19); and (5) transfers under which the enjoyment of the transferred property was subject at decedent's death to a change through the exercise, either by the decedent alone or in conjunction with another person or persons, of a power to alter, amend, revoke, or terminate, or such a power was relinquished in contemplation of decedent's death (see articles 20 and 21).

The value of transferred property includible in the gross estate is the value thereof at the date of decedent's death, or if the executor has duly elected pursuant to the provisions of section 202 of the Revenue Act of 1935 (by which section subdivision (j) was added to section 302 of the Revenue Act of 1926, as amended) to have the value of the gross estate determined as of the dates therein prescribed, then the value will be that as of the applicable date or dates so prescribed (see article 11). If a portion only of the property was so transferred as to come within the terms of the statute, only a corresponding proportion of the value of the property should be included in ascertaining the value of the gross estate. If the transferee has made additions to the property, or betterments, the enhanced value of the property due thereto should not be included.

To constitute a bona fide sale for an adequate and full consideration in money or money's worth the transfer must have been made in good faith, and the price must have been an adequate and full equivalent reducible to a money value. If the price was less than such a consideration, only the excess of the fair market value of the property

(as of the date of decedent's death, or as of the applicable date under such an election as is mentioned in the last preceding paragraph) over the price received by the decedent should be included in ascertaining the value of the gross estate. For the purposes of the tax a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in decedent's property or estate, is not to any extent a consideration in money or money's worth.

In case a transfer, by trust or otherwise, was made by a written instrument, duplicate copies thereof should be filed with the return. If of public record, one of the copies should be certified; if not of record, one copy should be verified. If the decedent was a nonresident, only one copy, certified or verified, need be filed.

All transfers made by the decedent during his life of an amount of \$5,000 or more, except bona fide sales for an adequate and full consideration in money or money's worth, must be disclosed in the return, whether the executor regards such transfers as subject to the tax or not. If the executor believes that such a transfer is not subject to the tax a brief statement of the pertinent facts should be made.

ART. 16. Transfers in contemplation of death.—Transfers in contemplation of death made by the decedent after September 8, 1916, other than bona fide sales for an adequate and full consideration in money or money's worth, must be included in the gross estate. A transfer in contemplation of death is subject to the tax although the decedent parted absolutely and immediately with his title to, and possession and enjoyment of, the property.

A transfer in contemplation of death is a disposition of property prompted by the thought of death. The phrase "contemplation of death" as used in the statute is not limited to contemplation of imminent death or to an apprehension that death is near at hand. Death must be "contemplated," that is, the motive which induces the transfer must be such that leads to testamentary disposition. A gift inter vivos which springs from a motive essentially associated with life rather than with death is not made in contemplation of death.

As the phrase "transfer in contemplation of death" is applicable to many varying transactions, the circumstances of each case must be examined to ascertain the motive which induced the decedent to make the transfer. If the transfer results from mixed motives, one of which is the thought of death, the more compelling motive controls. A condition of the mind or body of the transferor (whether occasioned by old age or disease) which naturally prompts a testamentary disposition to a proper object of his bounty, will be considered a decisive test of contemplation of death in the absence of proof of the existence of purposes associated with life as the dominant motive for the transfer.

Any transfer without an adequate and full consideration in money or money's worth, made by the decedent within two years of his death, of a material part of his property in the nature of a final disposition or distribution thereof, is, unless shown to the contrary, deemed to have been made in contemplation of death. This provision applies even though the decedent died subsequent to the effective date of the Revenue Act of 1926 and prior to the effective date of the Revenue Act of 1932.

If the executor contends that the value of a transfer of \$5,000 or more made by the decedent subsequent to September 8, 1916, should not be included in the gross estate because he considers that such transfer was not made in contemplation of death, he should file sworn statements with the return, in duplicate, of all the material facts and circumstances, including those directly or indirectly indicating the decedent's motive in making the transfer and his mental and physical condition at that time, and one copy of the death certificate.

The fact that a gift was made as an advancement to be taken into account upon the final distribution of the decedent's estate is not, in and of itself, determinative of its taxability. (See article 15.)

ART. 17. Transfers conditioned upon survivorship.—The statutory phrase, "a transfer * * * intended to take effect in possession or enjoyment at or after his death," includes a transfer by the decedent (other than a bona fide sale for an adequate and full consideration in money or money's worth) whereby and to the extent that the beneficial title to the property (if the transfer was in trust), or the legal title thereto (if the transfer was otherwise than in trust), remained in the decedent at the time of his death and the passing thereof was subject to the condition precedent of his death. If the tax applies, it does so without regard to the time of the transfer, whether before or after the enactment of the Revenue Act of 1916.

On the other hand, if, as a result of the transfer, there remained in the decedent at the time of his death no title or interest in the transferred property, then no part of the property is to be included in the gross estate merely by reason of a provision in the instrument of transfer to the effect that the property was to revert to the decedent upon the predecease of some other person or persons or the happening of some other event. (See article 15.)

ART. 18. Transfers with possession or enjoyment retained.—(a) *Transfers included.*—The statutory phrase, "a transfer * * * intended to take effect in possession or enjoyment at or after his death," includes a transfer, whether in trust or otherwise, made subject to the reservation or retention by the decedent of the use, or the possession, or the rents or other income or enjoyment of the transferred property, or any part thereof, for his life, or for a period not ascertainable without reference to his death, or for such a period as to

evidence his intention that it should extend at least for the duration of his life; including also the reservation or retention of the use, possession, rents, or other income the actual enjoyment of which, by the decedent, was to be postponed until the termination of a transferred precedent interest or estate. (See article 15.)

If for any such period the use, possession, rents, or other income (in whole or in part) were to be disposed of in discharge of a legal obligation of the decedent or otherwise for his pecuniary benefit, then to that extent the use, possession, rents, or other income will be treated as having been reserved to or retained by the decedent.

(b) *Taxability*.—Every such transfer (not amounting to a bona fide sale for an adequate and full consideration in money or money's worth), made by the decedent subsequent to September 8, 1916, is taxable, and the value of the property or interest so transferred shall be included in the gross estate of the decedent. The provisions of this subdivision do not apply (1) if the transfer was made prior to 10.30 p. m., eastern standard time, March 3, 1931, and (2) if the decedent died prior to 5 p. m., eastern standard time, June 6, 1932. See section 506 of the Revenue Act of 1934.

ART. 19. **Transfers with right retained to designate who shall possess or enjoy.**—(a) *Transfers included*.—The statutory phrase, “a transfer * * * intended to take effect in possession or enjoyment at or after his death,” includes a transfer, by trust or otherwise, in connection with which the decedent reserved or retained, either to himself alone or in conjunction with any other person or persons, the right during his life, or for a period not ascertainable without reference to his death, or for such a period as to evidence an intention that the right should continue for at least the duration of his life, to designate the person or persons who should possess or enjoy the transferred property (in whole or in part), or any of the income thereof. (See article 15.)

(b) *Taxability*.—If the transfer was not a bona fide sale for an adequate and full consideration in money or money's worth, the property or the interest or interests therein so transferred shall be included in the gross estate if falling within any one of the following paragraphs:

(1) Regardless of when the transfer was made, if decedent died after the enactment of the Revenue Act of 1916 (September 8, 1916), and the right to so designate was reserved at the time of the transfer and was subject to such an exercise as would determine the ultimate disposition of the property or of an interest or interests therein, and such right was exercisable by the decedent alone or in conjunction with a person or persons having no substantial adverse interest or interests in the property, or if exercisable in conjunction with a person having a substantial adverse interest or with several persons

some or all of whom held such an adverse interest, then to the extent of any interest or interests held by a person or persons not required to join in the exercise of the right and any adverse interest which was not substantial.

(2) When the transfer was made after the enactment of the Revenue Act of 1916 (September 8, 1916) and the decedent died after the enactment of the Revenue Act of 1932 (5 p. m., eastern standard time, June 6, 1932), or the transfer was made and the decedent died after 10.30 p. m., eastern standard time, March 3, 1931, and the right to so designate was reserved at the time of the transfer and was not subject to such an exercise as would determine the ultimate disposition of the property or of an interest or interests therein, but was limited to a designation of the person or persons who should possess or enjoy the property or the income therefrom (in whole or in part) for the period of decedent's life, or for a period not ascertainable without reference to his death, or for a period of such duration as to evidence an intent that it should extend for the remainder of decedent's life, and such right was exercisable by the decedent alone or in conjunction with a person or persons having no substantial adverse interest or interests in the transferred property, or if exercisable in conjunction with a person having a substantial adverse interest or with several persons some or all of whom held such an adverse interest, then to the extent of any interest or interests held by a person or persons not required to join in the exercise of the right and of any adverse interest which was not substantial.

(3) When the transfer was made and decedent died after the enactment of the Revenue Act of 1932 (5 p. m., eastern standard time, June 6, 1932) and the right to so designate was reserved at the time of the transfer, whether exercisable by decedent alone or in conjunction with a person or persons having or not having a substantial adverse interest or interests in the transferred property, or in conjunction with persons one or more of whom had and one or more of whom had not such an adverse interest.

As used in this article, the expression "reserved at the time of the transfer" includes any understanding, expressed or implied, had in connection with the making of the transfer that the right to designate the person or persons who should possess or enjoy the property or the income therefrom should later be created or conferred.

ART. 20. Transfers with power to change the enjoyment.—(a) *Transfers included.*—Subdivision (d) of section 302 of the Revenue Act of 1926, as amended, embraces a transfer by trust or otherwise (if not amounting to a bona fide sale for an adequate and full consideration in money or money's worth) when at the time of decedent's death the enjoyment of the transferred property, or some part thereof or

interest therein, was subject to any change through a power exercisable either by the decedent alone, or by him in conjunction with some other person or persons, to alter, or amend, or revoke, or terminate. (See article 15.)

The addition to the subdivision, by section 805 of the Revenue Act of 1936, of the phrase to the effect that it is not material in what capacity the power was subject to exercise by the decedent or by the other person or persons in conjunction with the decedent, is considered as merely declaratory of the meaning of the subdivision prior to the addition of the phrase.

The second phrase added by amendment in 1936 (namely, "without regard to when or from what source the decedent acquired such power") is not considered declaratory of the meaning of the subdivision prior to the amendment in a case in which no one of the powers enumerated in the subdivision was reserved at the time of the making of the transfer, but one or more thereof was conferred subsequent thereto (whatever the source from which conferred) without any understanding, expressed or implied, had in connection with the making of the transfer that such power or powers should be later conferred.

The third change made in the subdivision by the Revenue Act of 1936 consisted of the addition of the words "or terminate" following the words "to alter, amend, revoke." Such addition is considered but declaratory of the meaning of the subdivision prior to the amendment. A power to terminate capable of being so exercised as to revert in the decedent the ownership of the transferred property or an interest therein, or as otherwise to inure to his benefit or the benefit of his estate, is, to that extent, the equivalent of a power to "revoke," and when otherwise so exercisable as to effect a change in the enjoyment, is the equivalent of a power to "alter."

(b) *Taxability*.—The property or the interest or interests therein so transferred shall be included in the gross estate if coming within any one of the following paragraphs:

(1) Regardless of when the transfer was made, if the decedent died after the enactment of the Revenue Act of 1916 (September 8, 1916), and the power was reserved at the time of the transfer and was exercisable by the decedent alone or in conjunction with a person or persons having no substantial adverse interest or interests in the transferred property, or if exercisable in conjunction with a person having a substantial adverse interest or with several persons some or all of whom held such an adverse interest, then to the extent of any interest or interests held by a person or persons not required to join in the exercise of the power and any adverse interest which was not substantial.

(2) When the transfer was made after the enactment of the Revenue Act of 1924 (4.01 p. m., eastern standard time, June 2, 1924) and before the amendment of the subdivision by the Revenue Act of 1936 became effective (June 23, 1936), and the decedent's death occurred at any time subsequent to the transfer, and the power was reserved at the time of the transfer and was exercisable by the decedent alone or in conjunction with a person or persons either having or not having a substantial adverse interest or interests in the transferred property, or in conjunction with persons one or more of whom had and one or more of whom had not such an adverse interest.

(3) When the transfer was made and the decedent died after June 22, 1936 (the date of the enactment of the Revenue Act of 1936), and the power was either reserved at the time of the transfer or later created or conferred, without regard to the source from which the power was acquired, and whether exercisable by the decedent alone or in conjunction with a person or persons either having or not having a substantial adverse interest or interests in the transferred property, or in conjunction with persons one or more of whom had and one or more of whom had not such an adverse interest.

As used in this and in the next succeeding article, the expression "reserved at the time of the transfer" refers to a power which, having been reserved when the transfer was made, continued to the date of decedent's death (see the paragraph next following as to the conditions under which the power will be considered as existent at decedent's death) to be exercisable by decedent alone or by him in conjunction with some other person or persons, and includes any understanding, expressed or implied, had in connection with the making of the transfer that the power should later be created or conferred.

The power to alter, amend, revoke, or terminate will be considered to have existed on the date of the decedent's death, though the exercise of the power was subject to a precedent giving of notice, or though the alteration, amendment, revocation, or termination would take effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice had been given or the power had been exercised, or though the exercise of the power was restricted to a particular time or the happening of a particular event which had not arrived or occurred at decedent's death. When determining the value of the gross estate in such cases the full value of the property transferred subject to the power should be discounted for the period required to elapse between the date of decedent's death and the date upon which the alteration, amendment, revocation, or termination could take effect. (See article 10(i)(3).)

The provisions of this article do not apply to a transfer when the power may be exercised only with the consent of all parties having an interest, vested or contingent, in the transferred property, and the power adds nothing to the rights of the parties as conferred by the applicable local law.

ART. 21. Power relinquished in contemplation of death.—If the decedent had previously held, either alone or in conjunction with another person or persons, a power to alter, or amend, or revoke, or terminate a transfer made by him, and the power was subsequently relinquished in contemplation of the decedent's death (the relinquishment not amounting to a bona fide sale for an adequate and full consideration in money or money's worth), then to the extent that the transferred property or any interest therein had been subject to such relinquished power it is to be included in the gross estate if coming within any one of the following paragraphs:

(1) Regardless of when the transfer was made, if the power was reserved at the time of the transfer and was relinquished and the decedent died after the enactment of the Revenue Act of 1916 (September 8, 1916), and the power was exercisable by the decedent alone or in conjunction with a person or persons having no substantial adverse interest or interests in the transferred property, or if exercisable in conjunction with a person having a substantial adverse interest or with several persons some or all of whom held such an adverse interest, then to the extent of any interest or interests held by a person or persons not required to join in the exercise of the power and any adverse interest which was not substantial.

(2) When the transfer was made after the enactment of the Revenue Act of 1924 (4.01 p. m., eastern standard time, June 2, 1924) and before the amendment of the subdivision by the Revenue Act of 1936 became effective (June 23, 1936), and the power was reserved at the time of the transfer and its relinquishment and the decedent's death subsequently occurred, and the power was exercisable by the decedent alone or in conjunction with a person or persons either having or not having a substantial adverse interest or interests in the transferred property, or in conjunction with persons one or more of whom had and one or more of whom had not such an adverse interest.

(3) When the transfer was made after June 22, 1936 (the date of the enactment of the Revenue Act of 1936), and the relinquishment of the power and the decedent's death subsequently occurred, and the power was either reserved at the time of the transfer or later created or conferred, without regard to the source from which the power was acquired, and whether exercisable by the decedent alone or in conjunction with a person or persons either having or not

having a substantial adverse interest or interests in the transferred property, or in conjunction with persons one or more of whom had and one or more of whom had not such an adverse interest.

Within the meaning of this article, it is essential to a relinquishment of a power which is exercisable by the decedent in conjunction with another person or persons that the relinquishment by such other person or persons operates as a complete relinquishment of the power.

If the relinquishment be not admitted or shown to have been in contemplation of decedent's death, but occurred within two years prior to such death, and affected the interest or interests (whether arising from one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggregate value in excess of \$5,000 (as of the date of decedent's death, or as of the applicable date under such an election as is referred to in the second paragraph of article 15) then, to the extent of such excess, the relinquishment will be deemed, unless shown to the contrary, to have been in contemplation of decedent's death. (See article 15.)

GROSS ESTATE—PROPERTY HELD JOINTLY

SEC. 302 (as amended by section 404 of the Revenue Act of 1934). The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside the United States— * * *

(e) To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: *Provided*, That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further*, That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants; * * *

SEC. 303. (d) (as amended by section 804 of the Revenue Act of 1932) * * * For the purposes of this title, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate

created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth."

ART. 22. Property held jointly or as tenants by the entirety.—The foregoing provisions of the statute extend to joint ownerships wherein the right of survivorship exists, regardless of when such ownerships were created. The statute specifically reaches property held jointly by the decedent and any other person or persons, or by the decedent and spouse as tenants by the entirety, or deposited with any person or institution carrying on a banking business in the name of the decedent and any other person and payable to either or the survivor, provided the decedent contributed toward the acquisition of the property so held or deposited, or acquired it by gift, bequest, devise, or inheritance. Section 302(e), as amended, applies to all classes of property, whether real or personal, in the case the survivor takes the entire interest therein by right of survivorship, and no interest therein forms a part of the decedent's estate for purposes of administration. It has no reference to property held by the decedent and any other person or persons as tenants in common.

ART. 23. Taxable portion.—The entire property is *prima facie* a part of the decedent's gross estate. But it is not the intent of the statute that there should be so included a greater part or proportion thereof than is represented by an outlay of funds, which, in the first instance, were decedent's own, or more than a fractional part equal to that of the other joint owner should neither have parted with any consideration in its acquirement. Facts, which in a given case bring it within any one of the exceptions enumerated in the statute, may be submitted by the executor.

Whether the entire property, or only a part, or none of it, enters into the make-up of the gross estate depends upon the following considerations: (1) So much of the property (whether the whole, or a part thereof) as originally belonged to the other joint owner, and which at no time in the past had been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth, forms no part of the decedent's gross estate. (2) If the facts are otherwise the same as in (1), but the decedent paid to such other joint owner a consideration for the interest by him (the decedent) acquired in the property, then such portion of the property, proportionate to the consideration so paid, constitutes a part of the gross estate. (3) If the property, or a part thereof, or a part of the consideration wherewith it was acquired, had at any time been acquired by the other joint owner from the decedent as a gift, or for less than an adequate and full consideration in money or money's worth, then such portion of the entire property, proportionate to the consideration, if any, which in the first instance

was paid from such other joint owner's own funds, forms no part of the gross estate. (4) If the property was acquired by the decedent and his or her surviving spouse as tenants by the entirety by gift, will, or inheritance, then but one-half of the property becomes a part of the gross estate. (5) If acquired by the decedent and the other joint owner as joint tenants by gift, will, or inheritance, and their interests are not otherwise specified or fixed by law, then one-half only of the property is a part of the gross estate; or, if so acquired by the decedent and two or more persons, and the interests of the several joint tenants are not otherwise determinable, then the decedent and the other joint tenants surviving him shall each be deemed the owner of an equal fractional part, and one only of such fractional parts is to be included in the gross estate.

The following are given as illustrative: (a) If the decedent furnished the entire purchase price, the entire property should be included in the gross estate; (b) if the decedent furnished a part only of the purchase price, only a corresponding portion of the property should be so included; (c) if the decedent, prior to the acquisition of the property by himself and the other joint owner, gave the latter a sum of money which later constituted such other joint owner's entire contribution to the purchase price of the property, the entire property should be included; (d) if the other joint owner, prior to the acquirement of the property, received from the decedent, for less than an adequate and full consideration in money or money's worth, property which thereafter became, as such, or in a converted form, part of the purchase price of the property, the value of the property to be included is to be reduced proportionately to the consideration furnished by the other joint owner in the original transaction; (e) if the decedent furnished no part of the purchase price, no part of the property should be included; (f) if the decedent and spouse acquired the property by will as tenants by the entirety, one-half of the property should be included.

For the purposes of the estate tax, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, is not to any extent a consideration in money or money's worth.

GROSS ESTATE—PROPERTY PASSING UNDER POWER OF APPOINTMENT

SEC. 302 (as amended by section 404 of the Revenue Act of 1934). The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside the United States— * * *

(f) (as amended by section 803 (b) of the Revenue Act of 1932). To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of or intended to take effect in possession or enjoyment at or after his death, or (3) by deed under which he has retained for his life or any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession or enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth; and * * *

(i) If any one of the transfers, trusts, interests, rights, or powers, enumerated and described in subdivisions (c), (d), and (f) of this section is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

SEC. 303(d) (as amended by section 804 of the Revenue Act of 1932)
* * * For the purposes of this title, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration in "money or money's worth".

SEC. 302. (f) (as originally enacted) To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth; and * * *

ART. 24. **Property passing under general power of appointment.**—Property passing under a general power of appointment must be included in the gross estate of the person exercising the power (known as the donee, or appointor), if the power is exercised by will. It should be so included if the power is exercised by deed or other instrument in contemplation of death. It should also be so included if the power is exercised by deed or other instrument with the intent that the transfer shall take effect in possession or enjoyment at or after the death of the donee of the power. (For description of transfers made in contemplation of death and transfers included in the phrase, "intended to take effect in possession or enjoyment at or after * * * death," and the taxability thereof with reference to when made and when the death occurred, see articles 16, 17, 18, and

19.) The statute, however, does not require inclusion in the gross estate of the appointed property in the case of a bona fide sale thereof by the donee of the power for an adequate and full consideration in money or money's worth.

Only property passing under a general power should be included. Ordinarily a general power is one to appoint to any person or persons in the discretion of the donee of the power, or, however limited as to the persons or objects in whose favor the appointment may be made, is exercisable in favor of the donee, his estate, or his creditors. Duplicate copies of the instrument granting the power and of the instrument by which the power was exercised, one of each to be certified or verified, must be filed with Form 706 in all cases, unless the decedent was a nonresident, in which case only one copy of each instrument, certified or verified, is required.

GROSS ESTATE—INSURANCE

SEC. 302 (as amended by section 404 of the Revenue Act of 1934). The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside the United States— * * *

(g) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over \$40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life. * * *

ART. 25. **Taxable insurance.**—The statute provides for the inclusion in the gross estate of insurance taken out by the decedent upon his own life, as follows: (a) All insurance receivable by, or for the benefit of, the estate; (b) all other insurance to the extent that it exceeds in the aggregate \$40,000.

The term "insurance" refers to life insurance of every description, including death benefits paid by fraternal beneficial societies, operating under the lodge system. Insurance is considered to have been taken out by the decedent, whether or not he made the application, if he acquired the ownership of, or any legal incident thereof in, the policy; but in the case of a decedent dying before November 7, 1934 (the date of approval of the 1934 edition of Regulations 80), the provisions of the second paragraph of article 25 of Regulations 70 (1929 edition) will continue to apply. Legal incidents of ownership in the policy include, for example: The right of the insured or his estate to its economic benefits, the power to change the beneficiary, to surrender or cancel the policy, to assign it, to revoke an assignment, to pledge it for a loan, or to obtain from the insurer a loan against the surrender value of the policy, etc.

ART. 26. Insurance in favor of the estate.—The provision requiring the inclusion in the gross estate of all insurance receivable by the executor, without any exemption, applies to policies made payable to the decedent's estate or his executor or administrator, and all insurance which is in fact receivable by, or for the benefit of, the estate. It includes insurance taken out to provide funds to meet the estate tax, and any other taxes or charges which are enforceable against the estate. The manner in which the policy is drawn is immaterial so long as there is an obligation, legally binding upon the beneficiary, to use the proceeds in payment of such taxes or charges. If the decedent took out insurance in favor of another person or corporation as collateral security for a loan or other accommodation, the insurance is considered to be receivable for the benefit of the estate. The amount of the loan outstanding at decedent's death, with interest accrued thereon to that date, will be deductible in determining the net estate. (See article 29.)

ART. 27. Insurance receivable by other beneficiaries.—The statute requires the inclusion in the gross estate of the decedent of the proceeds of any policy, or the aggregate proceeds of all policies, not receivable by or for the benefit of decedent's estate, to the extent that such proceeds exceed \$40,000, regardless of when the policy was or the policies were issued, if the decedent possessed at the time of his death any of the legal incidents of ownership.

The estate is entitled to only one exemption of \$40,000 upon insurance receivable by beneficiaries other than the estate. For example, if the decedent left life insurance payable to three such beneficiaries in amounts of \$10,000, \$40,000, and \$50,000 (total, \$100,000), the full amount should be listed on the return and therefrom subtracted the \$40,000 exemption as provided in the appropriate schedule of Form 706. The word "beneficiaries," as used in reference to the \$40,000 exemption, means persons entitled to the actual enjoyment of the insurance money.

ART. 28. Valuation of insurance.—The amount to be returned if the policy is payable to or for the benefit of the estate is the amount receivable. If the proceeds of a policy are payable to a beneficiary other than to or for the benefit of the estate, the amount to be listed in the appropriate schedule of the return is the full amount receivable. (For taxable portion see article 27.) In case the proceeds of a policy are made payable to the beneficiary in the form of an annuity for life or for a term of years, there should be listed in the appropriate schedule of the return the one sum payable at death under an option which could have been exercised either by the insured or by the beneficiary, or if no option was granted, the sum

used by the insurance company in determining the amount of the annuity.

With respect to each policy there should be filed a certificate, Form 712, from the insurance company showing the following:

- (a) The face amount of the policy.
- (b) The amount of any indebtedness to the company which reduced the amount otherwise payable.
- (c) The amount of accumulated dividends.
- (d) The amount of postmortem dividends.
- (e) Any other facts affecting the value. (See next paragraph.)
- (f) The value as of the date of death of the insured of the benefits payable under the policy.

In the case of any policy providing for deferred payments (other than payments measured by the facts disclosed under (a), (b), (c), and (d) above), the certificate should include the following information:

- (g) The provisions with respect to the deferred payments or to the installments.
- (h) The amounts of the deferred payments or installments.
- (i) If the number of installments to be paid may be measured by the life of any individual, the date of birth of such individual.
- (j) The amount applied by the insurance company as a single premium representing the purchase of the installment benefits.
- (k) The basis (Mortality Table and rate of interest) employed by the insurance company in valuing the installment benefits.

GROSS ESTATE—RETROACTIVE PROVISIONS

SEC. 302. * * * (h) Except as otherwise specifically provided therein subdivisions (b), (c), (d), (e), (f), and (g) of this section shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after the enactment of this Act.

DEDUCTIONS—ESTATES OF CITIZENS OR RESIDENTS ADMINISTRATION EXPENSES, CLAIMS, ETC.

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) (as amended by section 403(a) of the Revenue Act of 1934) In the case of a citizen or resident of the United States, by deducting from the value of the gross estate—

(1) (as amended by section 805 of the Revenue Act of 1932) Such amounts—

- (A) for funeral expenses,
- (B) for administration expenses,
- (C) for claims against the estate,

(D) for unpaid mortgages upon, or any indebtedness in respect to, property where the value of decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate, and

(E) reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent,

as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or property taxes not accrued before his death, or any estate, succession, legacy, or inheritance taxes. The deduction herein allowed in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded upon a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth. There shall also be deducted losses incurred during the settlement of estates arising from fires, storms, shipwrecks, or other casualties, or from theft, when such losses are not compensated for by insurance or otherwise, and if at the time of the filing of the return such losses have not been claimed as a deduction for income tax purposes in an income tax return. * * *

SEC. 303. (d) (as amended by section 804 of the Revenue Act of 1932) * * * For the purposes of this title, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth".

SEC. 303. (a) (as originally enacted) In the case of a resident, by deducting from the value of the gross estate—

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages upon, or any indebtedness in respect to, property (except, in the case of a resident decedent, where such property is not situated in the United States), to the extent that such claims, mortgages, or indebtedness were incurred or contracted bona fide and for an adequate and full consideration in money or money's worth, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, or from theft, when such losses are not compensated for by insurance or otherwise, and such amounts reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or any estate, succession, legacy, or inheritance taxes; * * *

ART. 29. Deduction of administration expenses, claims, etc.—In order to be deductible under the foregoing provision of the statute, the item must fall within one of the several classes of deductions specifically enumerated therein, and must also, except in the case of deduct-

ible losses during the administration of the estate, be one the payment of which out of the estate is authorized by the laws of the jurisdiction under which the estate is being administered. Unless both of these conditions exist the item is not deductible. If the item is not one of those described it is not deductible merely because payment is allowed by the local law. If the amount which may be expended for the particular purpose is limited by the local law no deduction in excess of such limitation is permissible. If a claim against the estate, an unpaid mortgage, or an indebtedness is founded upon a promise or agreement, the deduction therefor is limited to the extent that the liability was contracted bona fide and for an adequate and full consideration in money or money's worth. A relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, is not to any extent a consideration in money or money's worth.

An item may be entered on the return for deduction though the exact amount thereof is not then known, provided it is ascertainable with reasonable certainty, and will be paid. No deduction may be taken upon the basis of a vague or uncertain estimate. In the event the amount of the liability was unascertainable at the time of final audit of the return by the Commissioner, and, as a consequence, deduction was not allowed therefor in such audit, and subsequently the amount of the liability is ascertained, relief may be sought as provided by articles 76 and 99.

ART. 30. Effect of court decree.—The decision of a local court as to the amount of a claim or administration expense will ordinarily be accepted if the court passes upon the facts upon which deductibility depends. If the court does not pass upon such facts its decree will, of course, not be followed. For example, if the question before the court is whether a claim should be allowed, the decree allowing it will ordinarily be accepted as establishing the validity and amount of the claim. The decree will not necessarily be accepted even though it purports to decide the facts upon which deductibility depends. It must appear that the court actually passed upon the merits of the case. This will be presumed in all cases of an active and genuine contest. If the result reached appears to be unreasonable, this is some evidence that there was not such a contest, but it may be rebutted by proof to the contrary. If the decree was rendered by consent, it will be accepted, provided the consent was a bona fide recognition of the validity of the claim—not a mere cloak for a gift—and was accepted by the court as satisfactory evidence upon the merits. It will be presumed that the consent was of this character, and was so accepted, if given by all parties having an interest ad-

verse to the claimant. The decree will not be accepted if it is at variance with the law of the State; as, for example, an allowance made to an executor in excess of that prescribed by statute.

ART. 31. Funeral expenses.—An executor may deduct such amounts for funeral expenses as are actually expended by him and, under the laws of the local jurisdiction, are payable out of the decedent's estate. A reasonable expenditure by the executor for a tombstone, monument, mausoleum, or for a burial lot, either for the decedent or his family, may be deducted under this heading, provided such an expenditure is allowable by the local law. Included in funeral expenses is the cost of transportation of the person bringing the body to the place of burial.

ART. 32. Administration expenses.—The amounts deductible from the gross estate as "administration expenses" are such expenses as are actually and necessarily incurred in the administration of the estate; that is, in the collection of assets, payment of debts, and distribution among the persons entitled. The expenses contemplated in the law are such only as attend the settlement of an estate by the legal representative preliminary to the transfer of the property to individual beneficiaries or to a trustee, whether such trustee is the executor or some other person. Expenditures not essential to the proper settlement of the estate, but incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions. Administration expenses include (1) executor's commissions; (2) attorney's fees; (3) miscellaneous expenses. Each of these classes is considered separately in articles 33 to 35, inclusive.

ART. 33. Executor's commissions.—The executor or administrator, in filing the return, may deduct his commissions in such an amount as has actually been paid or which at that time it is reasonably expected will be paid, but no deduction may be taken if no commissions are to be collected. In the case the amount of the commissions has not been fixed by decree of the proper court, the deduction will be allowed on the final audit of the return provided: (1) That the Commissioner is reasonably satisfied that the commissions claimed will be paid; (2) that the amount entered as a deduction is within the amount allowable by the laws of the jurisdiction wherein the estate is being administered; and (3) that it is in accordance with the usually accepted practice in said jurisdiction in estates of similar size and character. If the deduction is disallowed in whole or in part on final audit, the disallowance will be subject to modification as the facts may later require. If the deduction is allowed in advance of payment and payment is thereafter waived, it shall be the duty of the executor to notify the Commissioner and pay the tax resulting therefrom, together with interest. Executors should note that the

commissions received as compensation for their services constitute taxable income and that the amounts received or receivable by them as such compensation are cross-referenced for income-tax purposes.

A bequest or devise to the executor in lieu of commissions is not deductible. If, however, the decedent fixed by his will the compensation payable to the executor for services to be rendered in the administration of the estate, deduction may be taken to the extent that the amount so fixed does not exceed the compensation allowable by the local law or practice.

Amounts paid as trustees' commissions do not constitute expenses of administration and are not deductible, whether received by the executor acting in the capacity of a trustee or by a separate trustee as such.

ART. 34. Attorney's fees.—The executor or administrator, in filing the return, may deduct such an amount of attorney's fees as has actually been paid or which at that time it is reasonably expected will be paid. If on the final audit of a return the fees claimed have not been awarded by the proper court and paid, the deduction will, nevertheless, be allowed, provided the Commissioner is reasonably satisfied that the amount claimed will be paid and that it does not exceed a reasonable remuneration for the services rendered, taking into account the size and character of the estate and the local law and practice. If the deduction is disallowed in whole or in part on final audit, the disallowance will be subject to modification as the facts may later require.

Attorney's fees incurred by beneficiaries incident to litigation as to their respective interests do not constitute a proper deduction, inasmuch as expenses of this character are properly charged against the beneficiaries personally and are not administration expenses.

ART. 35. Miscellaneous administration expenses.—This includes such expenses as court costs, surrogates' fees, accountants' fees, appraisers' fees, clerk hire, etc. Expenses necessarily incurred in preserving and distributing the estate are deductible, including the cost of storing or maintaining property of the estate, if it is impossible to effect immediate distribution to the beneficiaries. Expenses for preserving and caring for the property may not include additions or improvements; nor will such expenses be allowed for a longer period than the executor is required to retain the property. A brokerage fee for selling property of the estate is deductible if the sale is necessary in order to pay the decedent's debts, the expenses of administration, or to effect distribution. Other expenses attending the sale are deductible, such as the fees of an auctioneer, if it is reasonably necessary to employ one.

ART. 36. Claims against the estate.—The amounts that may be deducted under this heading are such only as represent personal obligations of the decedent existing at the time of his death, whether or not then matured, and interest thereon which had accrued at the time of death. If, as authorized by subdivision (j) of section 302 as added by section 202 of the Revenue Act of 1935 (see article 11), the executor has duly elected to have the value of the gross estate determined as of a date or dates prescribed in such subdivision, then the deduction on account of interest will be limited to the amount thereof accrued and unpaid at decedent's death, plus the interest earned between death and a date one year thereafter, unless the claim is sooner paid, in which case the amount of interest deductible will be the amount accrued to date of such payment. The deduction will include payments made of any interest accrued at decedent's death and payments of interest earned between death and one year thereafter, or between death and the date on which the claim was paid. Only claims enforceable against the decedent's estate may be deducted. If the claim is founded upon a promise or agreement, the deduction therefor is limited to the extent that the liability was contracted bona fide and for an adequate and full consideration in money or money's worth. Thus, a pledge or a subscription, evidenced by a promissory note or otherwise, even though enforceable against the estate, is deductible only to the extent that liability therefor was contracted bona fide and for an adequate and full consideration in cash or its equivalent. Liabilities imposed by law or arising out of torts are deductible. See article 29 as to the relinquishment or promised relinquishment of dower and other marital interests.

ART. 37. Taxes.—The deduction for property taxes is limited to such taxes as accrued prior to the date of decedent's death. Property taxes accrue on the date the ownership of the property determines the liability for such taxes.

Taxes upon income received during the decedent's lifetime are deductible, including interest accrued thereon at time of death, but taxes upon income received after death are not deductible. No estate, succession, legacy, or inheritance tax is deductible.

ART. 38. Unpaid mortgages.—Deduction is allowed of the full unpaid amount of a mortgage upon, or of an indebtedness in respect to, any property of the gross estate, including interest which had accrued thereon at the time of death, provided the value of the property, undiminished by the amount of the mortgage or indebtedness, is returned as part of the value of the gross estate. If decedent's estate is liable for the amount of the mortgage or indebtedness, the

full value of the property subject to the mortgage or indebtedness must be included as part of the value of the gross estate; the amount of the mortgage or indebtedness being in such case allowed as a deduction. But if decedent's estate is not so liable, only the value of the equity of redemption (or value of the property, less the indebtedness) need be returned as part of the value of the gross estate. In no case may the deduction on account of the mortgage or indebtedness exceed the liability therefor contracted bona fide and for an adequate and full consideration in money or money's worth. If the executor has made the election referred to in the second sentence of article 36, the deduction on account of interest upon the mortgage or indebtedness will be limited to the amount thereof accrued and unpaid at decedent's death, plus the interest earned between death and a date one year thereafter, unless the mortgage or indebtedness is sooner paid or the property subject to the mortgage or indebtedness is sooner distributed, sold, exchanged or otherwise disposed of, the deduction in any such case being limited to the amount of interest accrued to the date of such payment, distribution, sale, exchange or other disposition. The deduction will include payments made of any interest accrued at decedent's death and payments of interest earned between death and one year thereafter, or between death and the date of payment of the mortgage or indebtedness, or the date on which the property subject thereto was distributed, sold, exchanged or otherwise disposed of. Inasmuch as real property situated outside of the United States does not form a part of the gross estate, no deduction may be taken of any mortgage thereon or any indebtedness in respect thereto.

ART. 39. Losses from casualties or theft.—There may be deducted under this heading losses incurred during the settlement of the estate arising from fires, storms, shipwrecks, or other casualties, or from theft, if such losses are not compensated for by insurance or otherwise. In the case of a decedent who died subsequent to the effective date of the Revenue Act of 1932, such losses are not deductible if, at the time of the filing of the estate tax return, they had been claimed as a deduction for income tax purposes in an income tax return. If the loss is partly compensated, the excess of the loss over such compensation may be deducted. Losses not of the nature described are not deductible. In order to be deductible a loss must occur during the settlement of the estate. If a loss with respect to an asset occurs after distribution thereof to the distributee it may not be deducted.

ART. 40. Support of dependents.—The support during the settlement of the estate of dependents of the decedent is deductible, but pursuant to the following rules:

(1) In order to be deductible, the allowance must be authorized by the laws of the jurisdiction in which the estate is being administered, and not in excess of what is reasonably required.

(2) The allowance for which deduction may be made is limited to support during the settlement of the estate. Any allowance for a more extended period is not deductible.

(3) There must be an actual disbursement from the estate to the dependents, but after payment has been made the right of deduction is not affected by the fact that the dependents do not expend the entire amount for their support during the settlement of the estate.

DEDUCTIONS—PROPERTY PREVIOUSLY TAXED

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) (as amended by section 403(a) of the Revenue Act of 1934) In the case of a citizen or resident of the United States, by deducting from the value of the gross estate— * * *

(2) (as amended by section 806(a) of the Revenue Act of 1932 and by section 402 of the Revenue Act of 1934) An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under the Revenue Act of 1932, or an estate tax imposed under this or any prior Act of Congress, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate, and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this paragraph in respect of the property or property given in exchange therefor. Where a deduction was allowed of any mortgage or other lien in determining the gift tax, or the estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under this paragraph shall be reduced by the amount so paid. The deduction allowable under this paragraph shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under paragraphs (1), (3), and (4) of this subdivision as the amount otherwise deductible under this paragraph bears to the value of the decedent's gross estate. Where the property referred to in this paragraph consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction. * * *

SEC. 303. (a) (as originally enacted) In the case of a resident, by deducting from the value of the gross estate— * * *

(2) An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from such donor by gift or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under the Revenue Act of 1924, or an estate tax imposed under this or any prior Act of Congress was paid by or on behalf of the donor or the estate of such prior decedent as the case may be, and only in the amount of the value placed by the Commissioner on such property in determining the value of the gift or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate and not deducted under paragraph (1) or (3) of this subdivision; * * *.

NOTE.—All of the amendments to the above paragraph were made by section 806(a) of the Revenue Act of 1932, except that the following clause was inserted by section 402 of the Revenue Act of 1934: "and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this paragraph in respect of the property or property given in exchange therefor."

ART. 41. Deduction of the value of transfers previously taxed.—Should there be included in the decedent's gross estate property received by him by gift from any person within five years prior to his death, or received by gift, bequest, devise, or inheritance from any person who died within five years prior to his death, or property acquired in exchange for property so received, the statute authorizes a deduction in behalf thereof, subject to the following conditions and limitations, namely:

(a) *Conditions.*—

(1) The property respecting which the deduction is sought must have been received by the decedent as a gift within five years of the date of his death, or received by him by gift, bequest, devise, or inheritance from a prior decedent who died within five years of the date of the decedent's death.

(2) The property must be identified either as the same which the decedent so received or acquired in exchange therefor.

(3) The property must have formed a part of the gross estate, situated in the United States, of such prior decedent, or have been included in the total amount of gifts of a donor.

(4) An estate tax by or on behalf of the estate of such prior decedent, or a gift tax by or on behalf of the donor, must have actually been paid (the mere filing of a return for such estate or donor not being sufficient).

(5) If the decedent died after 11.40 a. m., eastern standard time, May 10, 1934, no such deduction, in respect to the property or property given in exchange therefor, must have been allowable in determining the value of the net estate of the prior decedent.

(b) *Limitations.*—

(A) If the decedent died prior to 5 p. m., eastern standard time, June 6, 1932—

(1) The deduction is limited to the value of the property finally determined for the purpose of the gift tax or for the purpose of the prior estate tax, or to the value of such property (or property acquired in exchange therefor) included in the decedent's gross estate, whichever is the lower.

(2) The deduction, as limited in (1), is reduced by the total amount paid prior to the decedent's death on any mortgage or other lien on the property previously taxed, provided such mortgage or other lien was deducted in determining the estate tax of the prior decedent, or the gift tax of the donor.

(3) The deduction for property previously taxed, or that acquired in exchange therefor, is not diminished by amounts deducted under paragraph (1) or (3) of subdivision (a) of section 303 merely because such amounts were paid out of said property. On the other hand, however, the deduction is diminished to the extent that the value of the property so taxed, or of that acquired in exchange therefor, is deducted under said paragraph (1) or (3) on account of such losses arising from casualty or theft as are incurred with respect to said property during the settlement of the estate, or on account of such transfers of specific items of said property as the decedent made in his lifetime or by his will, for public, religious, charitable, scientific, literary, or educational purposes, and the deduction is further diminished to the extent that the amounts allowed under said paragraph (1) or (3), other than those relating to said losses or transfers, are in excess of the value of the decedent's property not previously taxed but subject to debts and charges. The burden of proving that the estate is entitled to the deduction rests upon the executor. The provisions of this paragraph apply in like manner to cases controlled by the Revenue Acts of 1921 and 1924.

(B) If the decedent died after 5 p. m., eastern standard time, June 6, 1932—

(1) The deduction is limited to the value of the property, or the aggregate value of such property if more than one item, as finally determined for the purpose of the gift tax or for the

purpose of the prior estate tax, or to the value of such property or aggregate items thereof (or property acquired in exchange therefor) included in the decedent's gross estate, whichever is the lower.

(2) The deduction, as limited in (1), is reduced by the total amount paid prior to the decedent's death on any mortgage or other lien on the property previously taxed, provided such mortgage or other lien was deducted in determining the estate tax of the prior decedent or the gift tax of the donor.

(3) The deduction is further reduced on account of the deductions allowed under paragraphs (1), (3), and (4) of subdivision (a) of section 303. The amount of this further reduction is that proportion of such deductions which the amount otherwise deductible for property previously taxed bears to the value of the decedent's gross estate.

Under the provisions of the Revenue Act of 1918 the deduction was available only in the case the prior decedent died after October 3, 1917, the date of the passage of the Revenue Act of 1917, and the decedent's death occurred subsequent to the effective date of the Revenue Act of 1918. But under the provisions of the Revenue Act of 1921 the right to such deduction is made available to the estates of all decedents dying since September 8, 1916. If, under the provisions of the Revenue Act of 1918, or any prior Act of Congress imposing an estate tax, the deduction was not available, the right thereto is to be determined in accordance with the provisions of paragraph (2) of subdivision (a) of section 403 of the Revenue Act of 1921, but if available under the Revenue Act of 1918, it is governed by paragraph (2) of subdivision (a) of section 403 of that Act. Section 1100(c) of the Revenue Act of 1924 provides that the retroactive benefit of section 403 of the Revenue Act of 1921 is not lost by the repeal thereof. If the tax has been paid without taking the deduction, a claim for refund may be made, as provided by article 99.

Example (1): The decedent died June 15, 1931. The value of his gross estate for the purpose of the estate tax is \$1,000,000, of which \$200,000 is the value of insurance in excess of \$40,000 payable to beneficiaries other than the estate, \$600,000 is the value of property previously taxed, and \$200,000 is the value of stocks and bonds not previously taxed. The property previously taxed was inherited from the decedent's father, who died on June 1, 1929. The tax on the father's estate was paid. The property previously taxed may be set forth as follows:

	Decedent's estate	Prior estate	Lower value
Item 1.....	\$150,000	\$100,000	\$100,000
Item 2.....	40,000	85,000	40,000
Item 3.....	110,000	125,000	110,000
Item 4.....	130,000	120,000	120,000
Item 5.....	90,000	115,000	90,000
Item 6.....	80,000	50,000	50,000
Totals.....	600,000	595,000	510,000

Item 1, \$150,000, is specifically bequeathed to a charitable organization. Administration expenses and debts of the decedent amount to \$250,000.

The decedent having died prior to 5 p. m., eastern standard time, June 6, 1932, the deduction is limited to the value of each item placed upon it by the Commissioner in the prior estate or gift, or to the value of each item included in the decedent's gross estate, whichever is the lower. Accordingly, the total amount of the deduction thus ascertained is \$510,000. In accordance with paragraph (A) (3) of this article the deduction must be diminished to the extent of the value of any specific item bequeathed to a charitable organization. As item 1 was so bequeathed the amount of \$510,000 is diminished by \$100,000, the value of item 1 as included in the deduction for property previously taxed. Also, in accordance with paragraph (A) (3) of this article the deduction must be further diminished to the extent that the deductions for administration expenses and debts, or \$250,000, exceed the value of the decedent's property subject to debts and charges and not previously taxed, or \$200,000. This excess is \$50,000. The deduction for property previously taxed is, therefore, further diminished by \$50,000, and the amount of the deduction allowable for property previously taxed is \$360,000. The total deductions of \$860,000 (administration expenses and debts, \$250,000; charitable bequest, \$150,000; property previously taxed, \$360,000; and specific exemption, \$100,000) subtracted from the total gross estate of \$1,000,000 leaves a net estate of \$140,000.

Example (2): The decedent died June 15, 1936. The value of his gross estate for the purpose of the estate tax is \$1,000,000, of which \$200,000 is the value of insurance in excess of \$40,000 payable to beneficiaries other than the estate, \$600,000 is the value of property previously taxed, and \$200,000 is the value of stocks and bonds not so taxed. The property previously taxed was inherited from the decedent's father who died on June 1, 1932. The tax on the father's

estate was paid. The property previously taxed may be set forth as follows:

	Decedent's estate	Prior estate
Item 1.....	\$150,000	\$100,000
Item 2.....	40,000	85,000
Item 3.....	110,000	125,000
Item 4.....	130,000	120,000
Item 5.....	90,000	115,000
Item 6.....	80,000	50,000
Totals.....	600,000	595,000

Item 1, \$150,000, is specifically bequeathed to a charitable organization free of estate, inheritance, legacy, or succession taxes. Administration expenses and debts of the decedent amount to \$150,000. At the time of the father's death there was an unpaid mortgage of \$60,000 on item 5 which was deducted in determining the estate tax liability of the father's estate. This mortgage was entirely paid before the son's death.

The decedent having died after 5 p. m., eastern standard time, June 6, 1932, the deduction for property previously taxed is limited to the aggregate value of the items constituting such property as finally determined in the case of the prior decedent or donor, or to the aggregate value of such property included in the decedent's gross estate, whichever is the lower. Accordingly, the amount of the deduction for property previously taxed thus ascertained is \$595,000. In accordance with paragraph (B) (2) of this article this deduction is reduced by \$60,000, the amount paid in the discharge of the mortgage on item 5. The deduction thus reduced is \$535,000.

The deduction is further reduced by a proportionate amount computed under the provisions of paragraph (B) (3) of this article. As the amount of the specific exemption authorized by the Revenue Act of 1926 is greater than the amount of the specific exemption authorized by the Revenue Act of 1932, the amount so computed in determining the deduction for the purpose of the estate tax imposed by the Revenue Act of 1926 differs from the amount so computed in determining the deduction for the purpose of the additional tax imposed by the Revenue Act of 1932.

In the present example the deductions, except for property previously taxed, amount to \$400,000, as follows: \$150,000 for the charitable bequest, \$150,000 for administration expenses and debts, and \$100,000 for the specific exemption authorized by the Revenue Act of 1926. The proportionate amount by which the deduction for property previously taxed is further reduced for the purpose of the estate

tax imposed by the Revenue Act of 1926 is ascertained by multiplying the above mentioned \$400,000 by 0.535, the ratio which the said \$535,000 bears to the value of the gross estate, \$1,000,000, and amounts to \$214,000. The difference between \$535,000 and \$214,000 is \$321,000, the amount in which the deduction for property previously taxed is allowable in determining the tax imposed by the Revenue Act of 1926. The total amount of the deductions, \$721,000, subtracted from the value of the gross estate, \$1,000,000, leaves a net estate of \$279,000 the transfer of which is subject to the tax imposed by the Revenue Act of 1926.

The Revenue Act of 1932, as amended by the Revenue Act of 1935, provides for a specific exemption of \$40,000. Accordingly, the deductions, other than the deduction for property previously taxed, allowable under that Act, as amended, amount to \$340,000, and 0.535 of that amount is \$181,900, the proportionate amount by which the deduction for property previously taxed is further reduced for the purposes of the additional tax. The difference between \$535,000 and \$181,900 is \$353,100, the amount in which the deduction for property previously taxed is allowable in determining the additional tax. The total amount of the deductions, \$693,100, subtracted from the value of the gross estate, \$1,000,000, leaves a net estate of \$306,900, the transfer of which is subject to the additional tax imposed by the Revenue Act of 1932, as amended by the Revenue Act of 1935.

ART. 42. Property originally received.—If the property originally received from a donor or prior decedent is included in the decedent's gross estate, the executor must describe it fully and prove its identity.

ART. 43. Property acquired in exchange.—The deduction for substituted property is not limited to property acquired by a single exchange of property received from the donor or the prior decedent, but extends to substituted property acquired by the process of exchange, whether through the medium of money or otherwise, irrespective of the number of conversions involved, including the proceeds of the sale or other disposition of property so received or acquired, as well as property acquired by purchase with the proceeds of the sale or other disposition of such property so long as such proceeds can be conclusively identified as such and clearly traced to the property originally so received.

The executor must describe and fully identify both the property originally received from the donor or the prior decedent and the substituted property for which deduction is claimed, giving the date and stating the nature of the transaction by which the substituted property was acquired, together with the name and address of the transferee. If the transaction was evidenced by written instrument

of public record, precise reference to such record must be made, and if by instrument not of record, a verified copy thereof must be supplied. If there was no written instrument, there must be furnished the affidavit of one or more persons having personal knowledge of the matter, setting forth the facts in connection therewith.

The burden of identifying property as acquired in exchange for property included in the gross estate of the prior decedent for Federal estate tax purposes rests upon the executor.

DEDUCTIONS—TRANSFERS FOR PUBLIC, CHARITABLE, RELIGIOUS, ETC., USES

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) (as amended by section 403(a) of the Revenue Act of 1934) In the case of a citizen or resident of the United States, by deducting from the value of the gross estate— * * *

(3) (as amended by section 807 of the Revenue Act of 1932 and by section 406 of the Revenue Act of 1934) The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. If the tax imposed by section 301, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate; and * * *

SEC. 303. (a) (as originally enacted) In the case of a resident, by deducting from the value of the gross estate— * * *

(3) The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educa-

tional purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate; and * * *.

NOTE.—The second sentence of section 303(a) (3), as amended, was added by section 807 of the Revenue Act of 1932. The clause, "and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation," was added by section 406 of the Revenue Act of 1934.

ART. 44. Transfers for public, charitable, religious, etc., uses.—Deduction may be taken of the value of all property transferred by will or by the decedent in his lifetime not to exceed the value of the transferred property required to be included in the gross estate if in either case the property was transferred (1) to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes; or (2) to or for the use of any corporation or association organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals), if no part of the net earnings of the corporation or association inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; or (3) to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, if such transfers, legacies, bequests, or devises are to be used by such trustee, trustees, fraternal society, order, or association exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

If a trust is created for both a charitable and a private purpose, deduction may be taken of the value of the beneficial interest in favor of the former only insofar as such interest is presently ascertainable, and hence severable from the interest in favor of the private use. Article 10 indicates the principles to be applied in the computation of the present worth of deferred uses, but such computation will not be made by the Commissioner on behalf of the executor. Thus, if money or property is placed in trust to pay the income to an individual during his life, or for a term of years, and then to pay or deliver the principal to a charitable corporation, or to apply it to a charitable purpose, the present value of the remainder is deducti-

ble. To determine the present value of such remainder, use the appropriate factor in column 3 of Table A or B of article 10. If the present worth of a remainder bequeathed for a charitable use is dependent upon the termination of more than one life, or in any other manner rendering inapplicable Table A or B of article 10, the claim for the deduction must be supported by a full statement, in duplicate, of the computation of the present worth made, in accordance with the principles set forth in article 10, by one skilled in actuarial computations.

The deduction is not limited, in the estates of residents (or of citizens who died after the enactment of the Revenue Act of 1934), to transfers to domestic corporations or associations, or to trustees for use within the United States.

If the decedent died after 5 p. m., eastern standard time, June 6, 1932, and under the terms of the will, or the law of the jurisdiction wherein the estate is administered, or the law of the jurisdiction imposing the particular tax, the Federal estate tax (including the additional estate tax imposed by the Revenue Act of 1932, or by that Act as amended), or any estate, succession, legacy, or inheritance tax is payable in whole or in part out of any bequest, legacy, or devise deductible under section 303(a)(3), the sum deductible is the amount of such bequest, legacy, or devise so reduced. Thus, if \$50,000 is bequeathed for a charitable purpose and is subjected to a State inheritance tax of \$5,000, the amount deductible is \$45,000; or if a life estate is bequeathed to an individual with remainder over to a charitable corporation, and by the local law the legacy tax upon the life estate is taken out of the corpus with the result that the charitable corporation will be entitled to receive only the amount of the fund less the tax, the deduction is limited to the present worth, as of the date of the testator's death, of the remainder of the fund so reduced; or if the testator bequeaths his residuary estate, or a portion thereof, to charity, and his will contains a direction that certain inheritance taxes, otherwise payable from legacies in respect to which they were laid, shall be payable out of such residuary estate, the deduction may not exceed the bequest to charity thus reduced pursuant to the direction of the will; or if a residuary estate, or a portion thereof, be bequeathed to charity, and by the local law the Federal estate tax is payable out of the residuary estate, the deduction may not exceed that portion of the residuary estate bequeathed to charity as reduced by the Federal estate tax. The statute in effect provides that the deduction shall be based on the amount actually available for charitable uses, that is, the amount of the fund remaining after the payment of all death taxes. The return should fully disclose the computation of the amount to be deducted. If such amount is dependent upon the amount of any death tax which has not been paid before

the filing of the return, Form 706, there should be submitted with the return a computation of such tax.

ART. 45. Religious, charitable, scientific, and educational corporations.—A corporation or association to which such a transfer was made must meet four tests: (1) It must be organized and operated for one or more of the specified purposes; (2) it must be organized and operated exclusively for such purpose or purposes; (3) no part of its net earnings shall inure to the benefit of private stockholders or individuals; and (4) no substantial part of its activities shall be carrying on propaganda, or otherwise attempting, to influence legislation.

The estate is not deprived of the right to deduct the value of property so transferred by reason of the fact that private individuals are the recipients of the benefits which the corporation or association dispenses. Such right is, however, lost if any part of the net earnings of the corporation or association inures to the benefit of a private stockholder or individual.

ART. 46. Proof required.—In establishing the right of the estate to this deduction, the executor must submit:

(1) Duplicate copies of the will of the decedent, and of the order admitting the will to probate, one copy of each of which should be certified, if the deduction is claimed of property transferred by such will. Duplicate copies of any instrument in writing by which the decedent made a transfer of property in his lifetime the value of which is required by the statute to be included in his gross estate, if the deduction is claimed of property so transferred. If the instrument is of record one copy thereof should be certified, and if not of record, one copy should be verified. The certified or verified copy should be forwarded by the collector to the Commissioner.

(2) An affidavit by the executor stating whether any action has been instituted to contest the will, or any bequest or devise therein, the deduction of which from the gross estate is claimed, and whether, according to his information and belief, any such action is designed or contemplated.

(3) Such other documents or evidence as may be requested by the Commissioner.

ART. 47. Conditional bequests.—If the transfer is dependent upon the performance of some act or the happening of some event in order to become effective, it is necessary that the performance of the act or the occurrence of the event shall have taken place before the deduction can be allowed.

If the legatee, devisee, donee, or trustee is empowered to divert the property or fund, in whole or in part, to a use or purpose which would have rendered it, to the extent that it is subject to such power, not deductible had it been directly so bequeathed, devised, or given

by the decedent, deduction will be limited to that portion, if any, of the property or fund which is exempt from an exercise of such power.

SPECIFIC EXEMPTION

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) (as amended by section 403(a) of the Revenue Act of 1934) In the case of a citizen or resident of the United States, by deducting from the value of the gross estate— * * *

(4) An exemption of \$100,000. * * *

SEC. 401. Revenue Act of 1932. * * *

(c) (as amended by section 201(b) of the Revenue Act of 1935) For the purposes of this section the value of the net estate shall be determined as provided in Title III of the Revenue Act of 1926, as amended, except that in lieu of the exemption of \$100,000 provided in section 303(a)(4) of such Act, the exemption shall be \$40,000.

SEC. 303. (a) (as originally enacted) In the case of a resident, by deducting from the value of the gross estate— * * *

SEC. 401. (c) Revenue Act of 1932, as originally enacted. For the purposes of this section the value of the net estate shall be determined as provided in Title III of the Revenue Act of 1926, as amended, except that in lieu of the exemption of \$100,000 provided in section 303(a)(4) of such Act, the exemption shall be \$50,000.

SEC. 201. Revenue Act of 1935. * * *

(b) Section 401(c) of the Revenue Act of 1932 (relating to the exemption for the purposes of the additional estate tax) is amended by striking out "\$50,000" and inserting in lieu thereof "\$40,000". * * *

(d) The amendments made by this section shall be effective only with respect to transfers of estates of decedents dying after the date of the enactment of this Act.

ART. 48. Specific exemption.—A specific exemption should be deducted in determining the net estate in the case of the estate of a resident. A specific exemption should also be deducted in the case of the estate of a citizen, regardless of residence, if the decedent died after 11.40 a. m., eastern standard time, May 10, 1934. The specific exemption deductible in determining the net estate upon which the tax is imposed by the Revenue Act of 1926 (in effect after 10.25 a. m., eastern standard time, February 26, 1926), is \$100,000. The specific exemption deductible in determining the net estate upon which the additional tax is imposed by the Revenue Act of 1932 (in effect after 5 p. m., eastern standard time, June 6, 1932) is \$50,000 if the decedent died prior to August 31, 1935, and \$40,000 if the decedent died on or after August 31, 1935. If the decedent died prior to the enactment of the Revenue Act of 1926, the specific exemption is \$50,000. No specific exemption is authorized in the case of the estate of a nonresident alien, and no specific exemption is authorized

in the case of the estate of a nonresident, regardless of citizenship, if the decedent died prior to 11.40 a. m., eastern standard time, May 10, 1934.

ESTATES OF NONRESIDENT ALIENS

SEC. 303. (d) (as amended by section 403(d) of the Revenue Act of 1934) For the purpose of this title, stock in a domestic corporation owned and held by a nonresident not a citizen of the United States shall be deemed property within the United States, and any property of which the decedent has made a transfer, by trust or otherwise, within the meaning of subdivision (c) or (d) of section 302, shall be deemed to be situated in the United States, if so situated either at the time of the transfer, or at the time of the decedent's death. * * *

(e) (as amended by section 403(d) of the Revenue Act of 1934) The amount receivable as insurance upon the life of a nonresident not a citizen of the United States, and any moneys deposited with any person carrying on the banking business, by or for a nonresident not a citizen of the United States who was not engaged in business in the United States at the time of his death, shall not, for the purpose of this title, be deemed property within the United States.

(f) Missionaries duly commissioned and serving under boards of foreign missions of the various religious denominations in the United States, dying while in the foreign missionary service of such boards, shall not, by reason merely of their intention to permanently remain in such foreign service, be deemed nonresidents of the United States, but shall be presumed to be residents of the State, the District of Columbia, or the Territories of Alaska or Hawaii wherein they respectively resided at the time of their commission and their departure for such foreign service.

SEC. 303. (d) (as originally enacted) For the purpose of this title, stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States, and any property of which the decedent has made a transfer, by trust or otherwise, within the meaning of subdivision (c) or (d) of section 302, shall be deemed to be situated in the United States, if so situated either at the time of the transfer, or at the time of the decedent's death.

SEC. 303. (e) (as originally enacted) The amount receivable as insurance upon the life of a nonresident decedent, and any moneys deposited with any person carrying on the banking business, by or for a nonresident decedent who was not engaged in business in the United States at the time of his death, shall not, for the purpose of this title, be deemed property within the United States.

SEC. 403. Revenue Act of 1934. * * *

(d) Section 303 (d) and (e) of such Act, as amended, are amended by striking out the phrase "nonresident decedent" wherever such phrase appears in such subdivisions and inserting in lieu thereof in each case "nonresident not a citizen of the United States". * * *

ART. 49. Gross estate.—The gross estate of a citizen, alien, resident, and nonresident are made up in the same way. For computa-

tion of net estate of a nonresident alien (or a nonresident, regardless of citizenship, if death occurred prior to the enactment of the Revenue Act of 1934), see article 51. For meaning of the terms "citizens," "residents," and "nonresidents," and the presumption applying as to the residence of missionaries, see article 5.

ART. 50. Situs of property.—Real estate and tangible personal property are situated in the United States if physically therein. Certificates of stock, bonds, bills, notes, and other written evidences of intangible property which are treated as being the property itself are property situated in the United States if physically situated therein.

Except as provided in section 303(e) intangible personal property has a situs within the United States if consisting of a property right issuing from or enforceable against a corporation (public or private) organized in the United States or a person who is a resident of the United States. As examples, the following may be given: Corporate stock issued by such a corporation, or a simple debt, bond, note, or other chose in action for which such a corporation or individual is liable. Under the provisions of section 303(e) the amount receivable as insurance upon the life of a nonresident decedent (nonresident alien decedent if death occurred after the enactment of the Revenue Act of 1934) and any moneys deposited with any person carrying on the banking business by or for such a decedent not engaged in business in the United States at the time of his death shall not be deemed property within the United States.

Property of which the decedent has made a transfer taxable under the provisions of article 15 of these regulations is deemed to be situated in the United States if so situated either at the time of the transfer or at the time of the decedent's death. (See articles 15 to 21, inclusive.)

DEDUCTIONS—ESTATES OF NONRESIDENT ALIENS

SEC. 303. For the purpose of the tax the value of the net estate shall be determined— * * *

(b) (as amended by section 403(b) of the Revenue Act of 1934) In the case of a nonresident not a citizen of the United States, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—

(1) (as amended by section 401(a) of the Revenue Act of 1928) That proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated;

(2) (as amended by section 806(b) of the Revenue Act of 1932 and by section 402 of the Revenue Act of 1934) An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent

by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under the Revenue Act of 1932, or an estate tax imposed under this or any prior Act of Congress, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in that part of the decedent's gross estate which at the time of his death is situated in the United States, and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this paragraph in respect of the property or property given in exchange therefor. Where a deduction was allowed of any mortgage or other lien in determining the gift tax, or the estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under this paragraph shall be reduced by the amount so paid. The deduction allowable under this paragraph shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under paragraphs (1) and (3) of this subdivision as the amount otherwise deductible under this paragraph bears to the value of that part of the decedent's gross estate which at the time of his death is situated in the United States. Where the property referred to in this paragraph consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction.

(3) (as amended by section 807 of the Revenue Act of 1932 and by section 406 of the Revenue Act of 1934) The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used within the United States by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. If the tax imposed by section 301, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph

shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

(c) (as amended by section 403(c) of the Revenue Act of 1934) No deduction shall be allowed in the case of a nonresident not a citizen of the United States unless the executor includes in the return required to be filed under section 304 the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States. * * *

SEC. 303 (as originally enacted). For the purpose of the tax the value of the net estate shall be determined— * * *

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—

(1) That proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated, but in no case shall the amount so deducted exceed 10 per centum of the value of that part of his gross estate which at the time of his death is situated in the United States;

(2) An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from such donor by gift or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under the Revenue Act of 1924, or an estate tax imposed under this or any prior Act of Congress was paid by or on behalf of the donor or the estate of such prior decedent as the case may be, and only in the amount of the value placed by the Commissioner on such property in determining the value of the gift or the gross estate of such prior decedent, and only to the extent that the value of such property is included in that part of the decedent's gross estate which at the time of his death is situated in the United States and not deducted under paragraph (1) or (3) of this subdivision; and

(3) The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used within the United States by such trustee or trustees, or by such fraternal society, order, or association,

exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

(c) No deduction shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section 304 the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States. * * *

SEC. 403. Revenue Act of 1934. * * *

(b) Section 303(b) of such Act, as amended, is amended by striking out "In the case of a nonresident" and inserting in lieu thereof "In the case of a nonresident not a citizen of the United States".

(c) Section 303(c) of such Act, as amended, is amended by striking out "in the case of a nonresident" and inserting in lieu thereof "in the case of a nonresident not a citizen of the United States". * * *

SEC. 401. Revenue Act of 1928.

(a) Section 303(b) (1) of the Revenue Act of 1926 (relating to deductions from the gross estate of a nonresident decedent) is amended by striking out: " , but in no case shall the amount so deducted exceed 10 per centum of the value of that part of his gross estate which at the time of his death is situated in the United States."

(b) Subsection (a) of this section shall apply in the case of nonresident decedents dying after the enactment of this Act.

NOTE.—All of the amendments to section 303(b) (2), as originally enacted, were made by section 806(b) of the Revenue Act of 1932, except that the following clause was inserted by section 402 of the Revenue Act of 1934: "and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this paragraph in respect of the property or property given in exchange therefor".

SEC. 807. Revenue Act of 1932.

Sections 303(a) (3) and 303(b) (3) of the Revenue Act of 1926 are amended by inserting after the first sentence of each a new sentence to read as follows:

"If the tax imposed by section 301, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes."

SEC. 406. Revenue Act of 1934.

Section 303(a) (3) and section 303(b) (3) of the Revenue Act of 1926, as amended, are amended by inserting after "individual", wherever appearing therein, a comma and the following: "and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation".

ART. 51. *Net estate*.—The statute imposes the tax upon the transfer of only the portion of the estate of a nonresident alien (or of a nonresident, regardless of citizenship, if the decedent died prior to the

enactment of the Revenue Act of 1934) that was situated in the United States. In determining the net estate, the deductions specifically authorized for this class of cases may be taken from the portion of the gross estate situated in the United States.

ART. 52. Deductions of administration expenses, claims, etc.—In estates of nonresident aliens (or of nonresidents, regardless of citizenship, if the decedents died prior to the enactment of the Revenue Act of 1934), deductions from the gross estate may be taken, subject to the limitations set forth in articles 29 to 40, inclusive, and to the limitations hereinafter stated, for the following: Funeral expenses; administration expenses; claims against the estate; unpaid mortgages; losses incurred during the settlement of the estate arising from fires, storms, shipwrecks, or other casualties, or from theft, if such losses are not compensated for by insurance or otherwise; and amounts reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent. It is immaterial whether the amounts to be deducted were incurred or expended within or without the United States, but certain limitations are imposed which do not apply to estates of residents or citizens (or of residents only, without regard to citizenship, if the decedents died prior to the enactment of the Revenue Act of 1934), namely:

(1) Only that proportion of the aggregate thereof is deductible which the value of that part of the gross estate situated (within the meaning of the statute) in the United States, bears to the value of the entire gross estate, wherever situated; and if the decedent died prior to the effective date of the Revenue Act of 1928, no sum may be deducted in excess of 10 per cent of the value of that part of the gross estate situated in the United States. (See article 55.) The 10 per cent limitation does not apply to the deductions hereafter considered in articles 53 and 54.

(2) No deduction whatever may be taken unless the executor includes in the return the value of that part of the gross estate not situated in the United States. Such part of the gross estate must be valued as of the date of the decedent's death; or, if the option authorized by section 302(j) is exercised, such part must be valued in accordance with the provisions of article 11.

In order that the Commissioner may properly pass upon the items claimed as deductions, the executor should submit a certified copy of the schedule of liabilities, claims against the estate, and expenses of administration filed under the foreign death-duty act; or, if no such schedule was filed, a certified copy of the schedule of such liabilities, claims, and expenses filed with the foreign court in which administration was had; or, if items of deduction allowable under

section 303(b)(1) were not included in either such schedule, or if no such schedules were filed, then the affidavit of the foreign executor setting forth the facts relied upon as entitling the estate to the benefit of the particular deduction or deductions.

ART. 53. Deduction of the value of property previously taxed.—The right to deduct the value of property received by a nonresident alien decedent (or by a nonresident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934) by gift from any person within five years prior to his death, or by gift, bequest, devise, or inheritance from any person who died within five years prior to his death, or of the value of property acquired in exchange for property so received, is governed by the same rules as those applying to estates of residents (articles 41 to 43, inclusive), subject to the four following exceptions:

(1) The deduction is not available to any extent unless the executor includes in the return the value of that part of the gross estate not situated in the United States. Such part of the gross estate must be valued as of the date of the decedent's death; or, if the option authorized by section 302(j) is exercised, such part must be valued in accordance with the provisions of article 11.

(2) The property for which the deduction is claimed must be included in that part of the gross estate situated in the United States at the time of the decedent's death.

(3) If the decedent died prior to the enactment of the Revenue Act of 1932, references in article 41(b)(A)(3) to paragraphs (1) and (3) of subdivision (a) of section 303, shall be deemed to refer to paragraphs (1) and (3) of subdivision (b) of section 303.

(4) If the decedent died after the enactment of the Revenue Act of 1932, instead of the amount of the deduction being reduced in accordance with the third limitation set forth under article 41(b)(B), the amount of the deduction is reduced by the proportion of the total other deductions, allowed under paragraphs (1) and (3) of subdivision (b) of section 303, which the amount otherwise deductible for property previously taxed bears to the value of the part of the gross estate situated in the United States at the time of the decedent's death.

ART. 54. Deduction of value of transfers for public, charitable, religious, etc., uses.—The right to deduct the value of property transferred by nonresident aliens (or nonresidents, regardless of citizenship, if decedents died prior to the enactment of the Revenue Act of 1934) for public, religious, charitable, scientific, literary, or educational purposes is governed by the same rules as those applying to estates of resident decedents (articles 44 to 47, inclusive), subject, however, to the two following exceptions:

(1) The right is limited to transfers to corporations and associations created or organized in the United States, or to trustees for use within the United States.

(2) The right is available only if the executor includes in the return the value of that part of the gross estate not situated in the United States. Such part of the gross estate must be valued as of the date of the decedent's death; or, if the option authorized by section 302(j) is exercised, such part must be valued in accordance with the provisions of article 11.

Instead of duplicate copies of the documents specified in article 46, only one copy is required to be filed.

ART. 55. Determination of net estate.—The following example will show the manner of determining the net estate of a nonresident alien. The gross estate, wherever situated, amounts to \$1,000,000, of which \$200,000 represents the value of the property having its situs within the United States (the term "United States" including not only the several States, but also the Territories of Alaska and Hawaii, and the District of Columbia). The funeral expenses, administration expenses, and claims against the estate aggregate \$150,000, and there are charitable bequests, for use within the United States, amounting to \$25,000. Hence the property situated within the United States constitutes 20 per cent of the entire gross estate wherever situated, and a like percentage of the \$150,000 is \$30,000. The following result is accordingly obtained:

Gross estate within the United States.....	\$200,000
20 per cent of \$150,000.....	\$30,000
Charitable bequests for use within the United States.....	25,000
	<hr/> 55,000
Net estate.....	<hr/> 145,000

For the manner of computing the tax on the net estate, see article 8.

In the example given, had the decedent died prior to the effective date of the Revenue Act of 1928, 20 per cent of the funeral expenses, administration expenses, and claims against the estate, or \$30,000, would not have been deductible, for the reason that it would have exceeded 10 per cent of the value of the property situated in the United States. The deduction in such case would have been limited to 10 per cent of \$200,000, plus the charitable bequests, or a total of \$45,000, and the resultant net estate would have been \$155,000, instead of the amount given in the example.

ART. 56. Payment of tax.—The provisions relating to credits (see article 9) and to rates and payment of the tax are the same in estates of nonresident aliens (or of nonresidents, regardless of citizenship,

if the decedents died prior to the enactment of the Revenue Act of 1934) and of residents or citizens (or of residents only, without regard to citizenship, if the decedents died prior to the enactment of the Revenue Act of 1934). The statute provides that the executor shall pay the tax. If there is no executor or administrator appointed, qualified, and acting within the United States, every person in either the actual or constructive possession of any property of the decedent is constituted by the statute an executor for the purpose of tax payment, and is liable for the tax to the extent of the property so in his possession. (See articles 78 to 85, inclusive.) All checks, drafts, or money orders should be made payable to the order of Collector of Internal Revenue.

PRELIMINARY NOTICE—ESTATES OF RESIDENTS OR CITIZENS

SEC. 304. (a) The executor, within two months after the decedent's death, or within a like period after qualifying as such, shall give written notice thereof to the collector. * * *

SEC. 403. Revenue Act of 1932, as amended by section 403(f) of the Revenue Act of 1934 and by section 201(c) of the Revenue Act of 1935.

Except as provided in section 402, the tax imposed by section 401 of this Act shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by section 301(a) of the Revenue Act of 1926, except that in the case of a citizen or resident of the United States a return shall be required if the value of the gross estate at the time of the decedent's death exceeds \$40,000.

SEC. 403. Revenue Act of 1932, as originally enacted.

Except as provided in section 402, the tax imposed by section 401 of this Act shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by section 301(a) of the Revenue Act of 1926, except that in the case of a resident decedent a return shall be required if the value of the gross estate at the time of the decedent's death exceeds \$50,000.

NOTE.—The words "resident decedent" were stricken out and the words "citizen or resident of the United States" substituted by section 403(f) of the Revenue Act of 1934. This section was further amended by section 201(c) of the Revenue Act of 1935 by striking out "\$50,000" and substituting "\$40,000". Section 201(d) of the Revenue Act of 1935 reads as follows:

"The amendments made by this section shall be effective only with respect to transfers of estates of decedents dying after the date of the enactment of this Act."

ART. 57. When notice required.—A preliminary notice is required to be filed in the case of every resident or citizen (or of a resident only, without regard to citizenship, if the decedent died prior to 11.40 a. m., eastern standard time, May 10, 1934), whose gross estate

exceeded \$40,000 in value at the date of death, except that if the decedent died (1) after September 8, 1916, and prior to 10.25 a. m., eastern standard time, February 26, 1926, or (2) after 5 p. m., eastern standard time, June 6, 1932, and prior to August 31, 1935, notice is required only if the gross estate exceeded \$50,000 in value at the date of death, and except that if the decedent died after 10.25 a. m., eastern standard time, February 26, 1926, and prior to 5 p. m., eastern standard time, June 6, 1932, notice is required only if the gross estate exceeded \$100,000 in value at the date of death. The value of the gross estate at the date of death governs with respect to the filing of the notice regardless of whether the value of the gross estate is, at the executor's election, finally determined as of a date subsequent to the date of death pursuant to the provisions of section 302(j) as added by section 202 of the Revenue Act of 1935. The notice must be filed in duplicate within two months after the decedent's death or within two months after the executor has qualified. In the case of a resident, it must be filed with the collector in whose district the decedent had his domicile at the time of death. In the case of a nonresident citizen, it must be filed with the collector in whose district the gross estate in the United States was situated; or, if the gross estate in the United States was situated in more than one district, or, if no part of the gross estate was situated in the United States, it must be filed with the collector for the second district of New York, or with such collector as the Commissioner may designate. If there is doubt as to whether the gross estate exceeded \$40,000, or exceeded \$50,000, or exceeded \$100,000, as the case may be, the notice should be filed as a matter of precaution in order to avoid the possibility of penalties attaching.

ART. 58. Notice by executor or administrator.—The duly qualified executor or administrator is required to file such preliminary notice on Form 704, copies of which may be obtained from the collector, within two months after qualifying as such, if notice has not already been filed. The primary purpose of the notice is to advise the Government of the existence of taxable estates, and filing should not be delayed beyond the two months' period because of uncertainty as to the exact value of the assets. The filing of the notice within the prescribed period is mandatory, and the estimate of the gross estate called for by the notice should be the best approximation of value which can be made within the time allowed. The instructions upon the back of the form should be read carefully before executing the notice. The signature of one executor or administrator upon Form 704 is sufficient. For penalties for delinquency in filing notice, or for filing a false or fraudulent notice, see articles 91, 92, and 94.

ART. 59. Notice by others than duly qualified executor or administrator.—The term “executor” embraces any person in actual or constructive possession of any property of the decedent at the time of the latter’s death, if within two months after the decedent’s death no executor or administrator qualifies. The notice on Form 704 must be filed by such persons in every case in which an executor or administrator has not duly qualified within such period. If, within the period mentioned, an executor or administrator qualifies, the duty of filing the notice devolves upon him, and all other persons are relieved therefrom.

PRELIMINARY NOTICE—ESTATES OF NONRESIDENT ALIENS

ART. 60. Estates of nonresident aliens; preliminary notice.—In estates of nonresident aliens (or of nonresidents, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934), notice on Form 705, copies of which may be obtained from the Commissioner of Internal Revenue, Washington, D. C., or from any collector of internal revenue, is required if any part of the gross estate was situated (see article 50) in the United States. The notice must be filed, in duplicate, by every appointed, qualified, and acting executor or administrator within the United States with the collector of internal revenue of the district in which such part of the gross estate was situated, or, if such part of the gross estate was situated in more than one district, it must be filed with the collector for the second district of New York or with such collector as the Commissioner may designate. The notice is necessary if any part of the decedent’s gross estate was situated, within the meaning of the statute, in the United States, regardless of the value of that part of the entire gross estate. If no executor or administrator has qualified, notice must be filed within two months after the date of death by every person in either the actual or constructive possession of any property of the decedent so within the United States at the time of his death. If such person has no knowledge of the decedent’s death within two months following its occurrence, he should file the notice immediately upon obtaining such knowledge. The term “person in actual or constructive possession of any property of the decedent” (section 300) includes, among others, the decedent’s agents and representatives; safe-deposit companies, warehouse companies, and other custodians of property in this country; brokers holding, as collateral, securities belonging to the decedent or investment funds owned by the decedent, and debtors of the decedent in this country. As to any moneys deposited by or for a decedent of this class with any person, corporation, or association carrying on the banking business, no notice is required, unless, however, the decedent was engaged in business in the United States at the time of his death.

ART. 61. Information return by corporation or transfer agent.—Upon notification from the Bureau of Internal Revenue a corporation (organized or created in the United States), or its transfer agent will be required to file a return disclosing the following information pertaining to stocks or bonds registered in the name of a nonresident decedent (regardless of citizenship): (1) Name of decedent as registered; (2) date of death, residence, place of death, and names and addresses of executors, attorneys, or other representatives, within and without the United States, if known; and (3) a description of the securities and the number of shares or bonds and the par values. Treasury Department Form 714, which will be supplied by the Bureau upon request, may be used for the return.

ART. 62. Transfer certificates.—Certificates permitting the transfer of property of nonresident decedents (regardless of citizenship) without liability will be issued by the Commissioner when he is satisfied that the tax imposed upon the estate, if any, has been fully discharged or provided for. The tax will be considered fully discharged for the purpose of the issuance of a transfer certificate only when investigation has been completed and payment of the tax, including any deficiency finally determined, has been made. If the tax liability has not been fully discharged transfer certificates may be issued permitting the transfer of particular items of property without liability upon the filing with the Commissioner of such security as he may require. No corporation or its transfer agent should transfer stock or bonds registered in the name of a nonresident decedent without first requiring this transfer certificate covering all of the decedent's stock and bonds of the corporation and showing that such transfer may be made without liability. A bank, trust company, or other custodian in possession of bills, notes, cash, mortgages, securities, money due on open accounts by domestic debtors, or any other property situated in the United States of a nonresident decedent's estate should also require the certificate before transferring such property. Corporations, transfer agents, banks, trust companies, or other custodians can insure avoidance of liability for tax and penalties only by demanding and receiving transfer certificates prior to transfer of property of nonresident decedents (regardless of citizenship).

The requirements of this and the preceding article do not apply if there is an executor or administrator appointed, qualified, and acting within the United States.

THE RETURN—ESTATES OF RESIDENTS OR CITIZENS

SEC. 304 (as amended by section 403(e) of the Revenue Act of 1934).

(a) * * * The executor shall also, at such times and in such manner as may be required by regulations made pursuant to law, file with

the collector a return under oath in duplicate, setting forth (1) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident not a citizen of the United States, of that part of his gross estate situated in the United States; (2) the deductions allowed under section 303; (3) the value of the net estate of the decedent as defined in section 303; and (4) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

(b) Return shall be made in all cases where the gross estate at the death of the decedent exceeds \$100,000, and in the case of the estate of every nonresident not a citizen of the United States any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate.

SEC. 403. Revenue Act of 1932, as amended by section 403(f) of the Revenue Act of 1934 and by section 201(c) of the Revenue Act of 1935.

Except as provided in section 402, the tax imposed by section 401 of this Act shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by section 301(a) of the Revenue Act of 1926, except that in the case of a citizen or resident of the United States a return shall be required if the value of the gross estate at the time of the decedent's death exceeds \$40,000.

SEC. 304 (as originally enacted). (a) * * * The executor shall also, at such times and in such manner as may be required by regulations made pursuant to law, file with the collector a return under oath in duplicate, setting forth (1) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident, of that part of his gross estate situated in the United States; (2) the deductions allowed under section 303; (3) the value of the net estate of the decedent as defined in section 303; and (4) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

(b) Return shall be made in all cases where the gross estate at the death of the decedent exceeds \$100,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate.

SEC. 403. Revenue Act of 1932, as originally enacted.

Except as provided in section 402, the tax imposed by section 401 of this Act shall be assessed, collected, and paid, in the same manner,

and shall be subject to the same provisions of law (including penalties), as the tax imposed by section 301(a) of the Revenue Act of 1926, except that in the case of a resident decedent a return shall be required if the value of the gross estate at the time of the decedent's death exceeds \$50,000.

SEC. 403. Revenue Act of 1934. * * *

(e) Section 304(a) and (b) of such Act, as amended, are amended by striking out "nonresident" wherever such word appears and inserting in lieu thereof in each case "nonresident not a citizen of the United States".

(f) Section 403 of the Revenue Act of 1932 is amended by striking out "resident decedent" and inserting in lieu thereof "citizen or resident of the United States".

SEC. 201. Revenue Act of 1935. * * *

(c) Section 403 of the Revenue Act of 1932, as amended, (relating to the requirement for filing a return under such additional estate tax) is amended by striking out "\$50,000" and inserting in lieu thereof "\$40,000".

(d) The amendments made by this section shall be effective only with respect to transfers of estates of decedents dying after the date of the enactment of this Act.

ART. 63. When return required—Date of filing.—A return on Form 706 is required in the case of every resident or citizen (or resident, without regard to citizenship, if the decedent died prior to 11.40 a. m., eastern standard time, May 10, 1934), whose gross estate, as defined in the statute, exceeded \$40,000 in value at the date of death, except that if the decedent died (1) after September 8, 1916, and prior to 10.25 a. m., eastern standard time, February 26, 1926, or (2) after 5 p. m., eastern standard time, June 6, 1932, and prior to August 31, 1935, the return is required only if the gross estate exceeded \$50,000 in value at the date of death, and except that if the decedent died after 10.25 a. m., eastern standard time, February 26, 1926, and prior to 5 p. m., eastern standard time, June 6, 1932, the return is required only if the gross estate exceeded \$100,000 in value at the date of death. The duty to file a return depends upon the value of the gross estate on the date of the decedent's death, regardless of any valuation as of a subsequent time that the executor may use by virtue of his election under subdivision (j) of section 302, as added by section 202 of the Revenue Act of 1935, since such election may be made only upon the return. In the case of a resident, the return must be filed with the collector in whose district the decedent had his domicile at the time of death. In the case of a nonresident citizen, it must be filed with the collector in whose district the gross estate in the United States was situated; or, if the gross estate in the United States was situated in more than one district, or, if no part of the gross estate was situated in the United States, it must be filed with the collector for the second district of New York, or with such collector as the Commissioner may designate. The return on

Form 706 must be filed in duplicate within 15 months after the date of death, if the decedent died on or after August 31, 1935, and within 1 year after the date of death, if the decedent died before August 31, 1935. If the return is due 15 months after the decedent's death, the due date is the day of the fifteenth calendar month after his death numerically corresponding to the day of the calendar month in which death occurred, except that, if there is no numerically corresponding day in such fifteenth month, the last day of such fifteenth month is the due date. For example, if the decedent died on August 31, 1937, the due date is November 30, 1938. If the due date for filing the return falls on a Sunday or on a legal holiday, the due date for filing will be the day following such Sunday or legal holiday. If placed in the mails the return should be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the date on which the return is required to be filed. If a return is made and placed in the mails in due course, properly addressed, and postage paid, in ample time to reach the office of the collector on or before the due date, no penalty will attach should the return not be actually received by such officer until subsequent to that date.

ART. 64. Persons liable for return.—The statute provides that the duly qualified executor or administrator shall file the return. If there is more than one executor or administrator, the return must be made jointly by all. If no executor or administrator has been appointed, every person in actual or constructive possession of any property of the decedent is constituted by the statute an executor for the purposes of the tax (section 300), and is required to make and file a return as provided by section 304. If, in any case, the executor is unable to make a complete return as to any part of the gross estate, he is required to give all the information he has as to such property, including a full description, and the name of every person holding a legal or beneficial interest in the property. If the executor is unable to make a return as to any property, the statute requires that every person holding a legal or beneficial interest therein shall, upon notice from the collector, make return as to such part of the gross estate. For penalties for delinquency in filing return, or for filing a false or fraudulent return, see articles 91, 92, and 94.

ART. 65. Preparation of return.—The return must be made on Form 706, copies of which will be supplied by the collector upon application. It must be filed in duplicate under oath and contain an itemized inventory by schedule of the property constituting the gross estate and lists of the deductions under the appropriate schedules. The return must set forth (1) the value of the gross estate (see articles 10-28), (2) the deductions allowed (see articles 29-48), (3) the value of the

net estate, and (4) the tax paid or payable thereon. If the decedent died subsequent to the effective date of the Revenue Act of 1932 (5 p. m., eastern standard time, June 6, 1932), the return must set forth (1) both the net estate determined in accordance with the provisions of the Revenue Act of 1926, and the net estate for the purposes of the additional tax imposed by the Revenue Act of 1932, or by that Act as amended, which should be determined in the same manner except that in lieu of the exemption of \$100,000 provided in section 303(a) (4) of the Revenue Act of 1926, the exemption is \$50,000 or \$40,000, as the case may be (see article 48), and (2) both the tax imposed by the Revenue Act of 1926 and the additional tax imposed by the Revenue Act of 1932, or by that Act as amended. The amount payable upon a return filed for an estate subject to both the tax imposed by the Revenue Act of 1926 and the additional tax imposed by the Revenue Act of 1932, or by that Act as amended, is the total of said taxes. The instructions printed on the form should be carefully followed. All documents and vouchers used in preparing the return should be retained by the executor so as to be available for inspection whenever required. Duplicate copies of the will, if the decedent died testate, one of which should be certified, must be submitted with the return, together with copies of such other documents as in Form 706 and in the applicable articles of these regulations are required. There may also be filed in duplicate copies of any documents which the executor may desire to submit with the return in explanation thereof.

In every case of an estate of a nonresident citizen who died after the date of the enactment of the Revenue Act of 1934, the executor should file the following documents with the return: (1) A copy of the inventory of property and the schedule of liabilities, claims against the estate and expenses of administration filed with the foreign court of probate jurisdiction, certified by a proper official of such court. (2) A copy of the return filed under the foreign inheritance, estate, legacy, or succession tax act, certified by a proper official of the foreign tax department, if the estate is subject to such a foreign tax.

ART. 66. Supplemental data.—The statute provides that the executor, in addition to filing notice and return, shall furnish such supplemental data as may be necessary to establish the correct tax (section 304). It is therefore the duty of the executor to furnish upon request copies of any documents in his possession relating to the estate, or on file in any court having jurisdiction over the estate, appraisal lists of any items included in the gross estate, copies of balance sheets or other financial statements relating to the value of stock, and any other information obtainable by him that may be found necessary in the determination of the tax. Failure to com-

ply with such a request will render the executor liable to penalties (article 93), and proceedings may be instituted in the proper United States court to secure compliance therewith (section 1122(a)).

Persons having possession or control of any records or documents containing or supposed to contain any information concerning the estate, or having knowledge or information of any fact or facts of a material bearing upon the liability, or the extent of liability, of the estate to the tax, shall, upon request of the Commissioner or any revenue agent or inspector designated by him for that purpose, make disclosure thereof. Failure on the part of any person to comply with such request will render him liable to penalties (article 93), and compliance with the request may be enforced in the proper United States court (section 1122(a)).

DETERMINATION OF TAX BY COMMISSIONER

SEC. 306. As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax.

SEC. 313. * * * (b) If the executor makes written application to the Commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Commissioner (as soon as possible, and in any event within one year after the making of such application, or, if the application is made before the return is filed, then within one year after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in section 310) shall notify the executor of the amount of the tax. The executor, upon payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

ART. 67. Examination of return and determination of tax by the Commissioner.—As soon as practicable after returns are filed, they will be examined and the amount of the tax determined by the Commissioner under such procedure as he may from time to time prescribe.

If the executor makes written application to the Commissioner for a determination of the tax and discharge from personal liability therefor, the Commissioner will, within one year after receipt of such application, or if the application is made before the return is filed then within one year after the return is filed, notify the executor of the amount of the tax, and upon payment thereof, the executor will be discharged from personal liability for any deficiency in the tax thereafter found to be due.

EXTENSION OF TIME FOR FILING RETURN

Sec. 3176. Revised Statutes (as amended by section 1103 of the Revenue Act of 1926 and by section 619(d) of the Revenue Act of 1928 [U. S. C., 1934 edition, Title 26, section 1524]).

* * * If the failure to file a return (other than a return of income tax) or a list is due to sickness or absence, the collector may allow such further time, not exceeding 30 days, for making and filing the return or list as he deems proper. * * *

ART. 68. Extension of time by collector.—In case of sickness or absence, collectors are authorized to grant an extension of time for filing the return for a period not in excess of 30 days from the due date, which extension may be granted either before or after the due date. An extension of time for filing the return does not in itself operate to extend the time for the payment of the tax, which is due and payable 15 months after the date of death if the decedent died on or after August 31, 1935, and 1 year after the date of death if the decedent died before August 31, 1935. For extension of time of payment, see article 82.

ART. 69. Extension of time by Commissioner.—In case it is impossible for the executor to file a reasonably complete return within 15 months from the date of death if the decedent died on or after August 31, 1935, or within 1 year from the date of death if the decedent died before August 31, 1935, the Commissioner may, upon application from the executor showing good and sufficient cause, grant an extension of time not to exceed 3 months from the due date if the decedent died on or after August 31, 1935, or 6 months from the due date if the decedent died before August 31, 1935. Before the expiration of the extension period granted a return as complete as possible must be filed. The return thus filed will be the return required by section 304(a) and any tax shown thereon will be the "amount determined by the executor as the tax" referred to in section 305(b) and section 307. Such return can not thereafter be amended, although supplemental information may subsequently be filed that may result in a finally determined tax different from the amount shown as the tax by the executor upon his return. An extension of time for filing the return does not operate to extend the time for payment of the tax, which is due 15 months after the date of death if the decedent died on or after August 31, 1935, and 1 year after the date of death if the decedent died before August 31, 1935. An extension of time in which to make payment of the tax may be secured as provided in article 82.

THE RETURN—ESTATES OF NONRESIDENT ALIENS

ART. 70. Return of estates of nonresidents.—A return on Form 706, copies of which may be obtained from the Commissioner of Internal Revenue, Washington, D. C., or from any collector of internal revenue, is required in the case of every nonresident alien (or nonresident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934) any part of whose gross

estate was situated (see article 50) in the United States. The return must set forth an itemized list of that part of the gross estate situated in the United States and the total value thereof (see article 51), the deductions claimed, if any (see articles 52-54), the value of the net estate (see article 55), and the tax paid or payable thereon. If the decedent died after the effective date of the Revenue Act of 1932 (5 p. m., eastern standard time, June 6, 1932), the return must set forth both the tax imposed by the Revenue Act of 1926 and any additional tax imposed by the Revenue Act of 1932, or that Act as amended. The return must be filed with the collector of internal revenue of the district in which such part of the gross estate was situated, or, if such part of the gross estate was situated in more than one district, it must be filed with the collector for the second district of New York, or with such collector as the Commissioner may designate. The return must be filed in duplicate and under oath within 15 months from the date of death if the decedent died on or after August 31, 1935, and within 1 year from the date of death if the decedent died before August 31, 1935, unless an extension is obtained pursuant to article 68 or 69. If the due date for filing the return falls on a Sunday or on a legal holiday, the due date for filing will be the day following such Sunday or legal holiday. If placed in the mails the return should be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the date on which the return is required to be filed. If a return is made and placed in the mails in due course, properly addressed, and postage paid, in ample time to reach the office of the collector on or before the due date, no penalty will attach should the return not be actually received by such officer until subsequent to that date. The return should be made and filed by the executor or administrator appointed, qualified, and acting within the United States, or, if none, then by any person in actual or constructive possession of any property of the decedent situated in the United States, whatever its value. If the qualified executor or administrator is unable to make a complete return as to any part of the gross estate, he is required to give all the information available to him as to such part, including a description thereof and the name of every person holding a legal or beneficial interest therein. As to the meaning of the term "person in actual or constructive possession of any property of the decedent", see article 60.

ART. 71. Supplemental data.—Pursuant to the provisions of section 304(a), with respect to furnishing supplemental data, if the decedent is a nonresident alien (or a nonresident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934), the executor is required to file with the return:

(1) A certified copy of will, if decedent died testate, or, if the decedent left several wills to govern in different jurisdictions, certified copy of each will.

(2) If any deductions are claimed, copy of inventory of property filed under the foreign death-duty act; or, if no such inventory was filed, a certified copy of inventory filed with the foreign court of probate jurisdiction.

The Commissioner may require the documents specified in paragraph (2) regardless of whether deductions are claimed. For requirements dealing with the duty to furnish other documents or information relating to the tax liability of the estate, and penalties in connection therewith, see article 66.

PRIVILEGED CHARACTER OF RETURNS

ART. 72. Returns confidential.—All estate tax returns and notices are treated as privileged communications and may not be exhibited, or the contents thereof divulged, to any person other than the executor or his duly authorized attorney or agent, except as prescribed in rules and regulations which may be separately issued upon the subject. This confidential treatment extends to records in possession of the Bureau of Internal Revenue, whether on file with the Commissioner, collector, or revenue agent, including information submitted or obtained in connection with a return. Internal revenue officers are not prohibited from disclosing the returned value of any item or the amount of any deduction, if such disclosure is necessary in order to arrive at the correct determination of the tax, but such right of disclosure does not extend to such information as the amount of the estate, the amount of tax, or other general data. If a copy of the return is desired because no copy was retained by the executor, or the retained copy has been lost or destroyed, or for other satisfactory reason, a copy may be furnished by the Commissioner to the executor, or to his authorized attorney or agent, upon payment of the fee prescribed.

ART. 73. Disclosure other than to executor.—If an attorney or other person asks a ruling on a question of law arising in a specific case, the Commissioner will require satisfactory evidence of the right to obtain such ruling. Hypothetical questions, however, can not be answered.

ART. 74. Attorneys must have authorization.—In all cases in which information is sought regarding an estate, or an interview is asked, by an attorney or by any agent of the executor or administrator, the information or interview will be denied unless the attorney or agent presents a duly executed power of attorney from the executor

or administrator authorizing the attorney or agent to act in his behalf.

No attorney or agent will be recognized as representing an estate or executor unless such attorney or agent is enrolled to represent claimants or others before the Treasury Department. For regulations governing enrollment, reference should be made to Treasury Department Circular No. 230, as revised, copies of which may be obtained upon application to the Secretary of the Committee on Enrollment and Disbarment, Treasury Department, Washington, D. C.

RETURN BY COLLECTOR OR COMMISSIONER

SEC. 3176. Revised Statutes (as amended by section 1103 of the Revenue Act of 1926 [U. S. C., 1934 edition, Title 26, section 1512 (a), (b), and (c)]).

If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner of Internal Revenue may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be prima facie good and sufficient for all legal purposes. * * *

ART. 75. No return filed, or a false or fraudulent return filed.—Section 3176 of the Revised Statutes, as amended, provides that if any person fails to make and file a return at the time required, or makes, willfully or otherwise, a false or fraudulent return, the collector or deputy collector shall make a return. The Commissioner may also make a return or amend any return made by a collector or deputy collector. A return so made by the Commissioner, or made by the collector or deputy collector and approved by the Commissioner, shall be prima facie good and sufficient for all legal purposes. If a tax is found to be due upon such a return, both the estate and the executor will be liable for penalties as well as for the tax.

DEFICIENCY TAX

SEC. 307. As used in this title in respect of a tax imposed by this title the term "deficiency" means—

(1) The amount by which the tax imposed by this title exceeds the amount shown as the tax by the executor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a

deficiency, and decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the executor upon his return, or if no return is made by the executor, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax.

SEC. 308. (a) (as amended by section 501, Revenue Act of 1934) If the Commissioner determines that there is a deficiency in respect of the tax imposed by this title, the Commissioner is authorized to send notice of such deficiency to the executor by registered mail. Within 90 days after such notice is mailed (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day), the executor may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. Except as otherwise provided in subdivision (d) or (f) of this section or in section 312 or 1001, no assessment of a deficiency in respect of the tax imposed by this title and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the executor, nor until the expiration of such 90-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3224 of the Revised Statutes the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

* * * * *

(e) The Board shall have jurisdiction to redetermine the correct amount of the deficiency, even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the executor, and to determine whether any additional amount or addition to the tax should be assessed, if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) If after the enactment of this Act the Commissioner has mailed to the executor notice of a deficiency as provided in subdivision (a), and the executor files a petition with the Board within the time prescribed in such subdivision, the Commissioner shall have no right to determine any additional deficiency, except in the case of fraud, and except as provided in subdivision (e) of this section or in subdivision (c) of section 312. If the executor is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered for the purposes of this subdivision or of subdivision (a) of this section, or of section 312, as a notice of a deficiency, and the executor shall have no right to file a petition with the Board of Tax Appeals based on such notice, nor shall such assessment or collection be prohibited by the provisions of subdivision (a) of this section.

SEC. 318. (a) If after the enactment of this Act the Commissioner determines that any assessment should be made in respect of any

estate or gift tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or by any such Act as amended, the Commissioner is authorized to send by registered mail to the person liable for such tax notice of the amount proposed to be assessed, which notice shall, for the purposes of this Act, be considered a notice under subdivision (a) of section 308 of this Act. In the case of any such determination the amount which should be assessed (whether as deficiency or additional tax or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in case of delinquency in payment after notice and demand and the provisions prohibiting claims and suits for refund) as in the case of a deficiency in the tax imposed by this title, except that in the case of an estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, the period of limitation prescribed in section 1109 of this Act shall be applied in lieu of the period prescribed in subdivision (a) of section 310.

(b) If before the enactment of this Act any person has appealed to the Board of Tax Appeals under subdivision (a) of section 308 of the Revenue Act of 1924 (if such appeal relates to a tax imposed by Title III of such Act or to so much of an estate tax imposed by any of the prior Acts enumerated in subdivision (a) of this section as was not assessed before June 3, 1924), and the appeal is pending before the Board at the time of the enactment of this Act, the Board shall have jurisdiction of the appeal. In all such cases the powers, duties, rights, and privileges of the Commissioner and of the person who has brought the appeal, and the jurisdiction of the Board and of the courts, shall be determined, and the computation of the tax shall be made, in the same manner as provided in subdivision (a) of this section, except as provided in subdivision (h) of this section and except that the person liable for the tax shall not be subject to the provisions of subdivision (a) of section 319.

(c) If before the enactment of this Act the Commissioner has mailed to any person a notice under subdivision (a) of section 308 of the Revenue Act of 1924 (whether in respect of a tax imposed by Title III of such Act or in respect of so much of an estate tax imposed by any of the prior Acts enumerated in subdivision (a) of this section as was not assessed before June 3, 1924), and, if the 60-day period referred to in such subdivision has not expired before the enactment of this Act and no appeal has been filed before the enactment of this Act, such person may file a petition with the Board in the same manner as if a notice of deficiency had been mailed after the enactment of this Act in respect of a deficiency in a tax imposed by this title. In such cases the 60-day period referred to in subdivision (a) of section 308 of this Act shall begin on the date of the enactment of this Act, and the powers, duties, rights, and privileges of the Commissioner and of the person entitled to file the petition, and the jurisdiction of the Board and of the courts, shall, whether or not the petition is filed, be determined, and the computation of the tax shall be made, in the same manner as provided in subdivision (a) of this section.

(d) If any deficiency in any estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, was assessed before June 3, 1924, but was not paid in full before the date of the enactment of this Act, and if the Commissioner, after the enactment of this Act, finally determines the amount of the deficiency, he is authorized to send by registered mail to the person liable for such tax notice of such deficiency, which notice shall, for the purposes of this Act, be considered a notice under subdivision (a) of section 308 of this Act. In the case of any such final determination the amount of the tax (whether as deficiency or additional tax or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in cases of delinquency in payment after notice and demand, and the provisions relating to claims and suits for refunds) as in the case of a deficiency in the tax imposed by this title, except as otherwise provided in subdivision (g) of this section, and except that the period of limitation prescribed in section 1109 of this Act shall be applied in lieu of the period prescribed in subdivision (a) of section 310.

(e) If any deficiency in any estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, was assessed before June 3, 1924, but was not paid in full before that date, and if the Commissioner after June 2, 1924, but before the enactment of this Act, finally determined the amount of the deficiency, and if the person liable for such tax appealed before the enactment of this Act to the Board of Tax Appeals and the appeal is pending before the Board at the time of the enactment of this Act, the Board shall have jurisdiction of the appeal. In all such cases the powers, duties, rights, and privileges of the Commissioner and of the person who has brought the appeal, and the jurisdiction of the Board and of the courts, shall be determined, and the computation of the tax shall be made, in the same manner as provided in subdivision (d) of this section, except as provided in subdivision (h) of this section and except that the person liable for the tax shall not be subject to the provisions of subdivision (a) of section 319.

(f) If any deficiency in any estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, was assessed before June 3, 1924, but was not paid in full before the date of the enactment of this Act, and if the Commissioner after June 2, 1924, finally determined the amount of the deficiency, and notified the person liable for such tax to that effect less than 60 days prior to the enactment of this Act and no appeal has been filed before the enactment of this Act, the person so notified may file a petition with the Board in the same manner as if a notice of deficiency had been mailed after the enactment of this Act in respect of a deficiency in a tax imposed by this title. In such cases the 60-day period referred to in subdivision (a) of section 308 of this Act shall begin on the date of the enactment of this Act, and, whether or not the petition is filed, the powers, duties, rights, and privileges of the Commissioner and of the person who is so notified, and the jurisdiction of the Board and of the courts, shall be deter-

mined, and the computation of the tax be made, in the same manner as provided in subdivision (d) of this section.

(g) In cases within the scope of subdivision (d), (e), or (f), if the Commissioner believes that the collection of the deficiency will be jeopardized by delay, he may, despite the provisions of subdivision (a) of section 308 of this Act, instruct the collector to proceed to enforce the payment of the unpaid portion of the deficiency, and notice and demand shall be made by the collector for the payment thereof. Within 30 days after such jeopardy notice and demand the person liable for the tax may obtain a stay of collection of the whole or any part of the amount included in the notice and demand by filing with the collector a bond in like manner, under the same conditions, and with the same effect, as in the case of a bond to stay the collection of a jeopardy assessment under section 312 of this Act.

(h) In cases within the scope of subdivision (b) or (e) of this section where any hearing before the Board has been held before the enactment of this Act and the decision is rendered after the enactment of this Act, such decision shall, for the purposes of this title, be considered to have become final upon the date when it is rendered, and neither party shall have any right to petition for a review of the decision. The Commissioner may, within one year from the time the decision is rendered, begin a proceeding in court for the collection of any part of the amount disallowed by the Board, unless the statutory period of limitations properly applicable thereto has expired before the appeal was taken to the Board. The court shall include in its judgment interest upon the amount thereof in the same cases, at the same rate, and for the same period, as if such amount were collected otherwise than by proceeding in court. In any such proceeding by the Commissioner or in any suit by the taxpayer for a refund, the findings of the Board shall be prima facie evidence of the facts therein stated.

(i) Where before the enactment of this Act a jeopardy assessment has been made under subdivision (d) of section 308 of the Revenue Act of 1924 (whether of a deficiency in the tax imposed by Title III of such Act or of a deficiency in an estate tax imposed by any of the prior Acts enumerated in subdivision (a) of this section) all proceedings after the enactment of this Act shall be the same as under the Revenue Act of 1924 as amended by this Act, except that—

(1) A decision of the Board rendered after the enactment of this Act where no hearing has been held by the Board before the enactment of this Act may be reviewed in the same manner as provided in this Act in the case of a tax imposed by this title;

(2) Where no hearing has been held by the Board before the enactment of this Act, the Commissioner shall have no right to begin a proceeding in court for the collection of any part of the deficiency disallowed by the Board; and

(3) In the consideration of the case the jurisdiction and powers of the Board shall be the same as provided in this Act in the case of a tax imposed by this title.

(j) In the case of any estate or gift tax imposed by prior Act of Congress, in computing the period of limitations provided in section 310 or 311 of this Act on the making of assessments and the beginning of distraint or a proceeding in court, the running of the statute of

limitations shall be considered to have been suspended (in addition to the period of suspension provided for in subdivision (b) of section 310) for any period of time prior to the enactment of this Act during which the Commissioner was prohibited from making the assessment or beginning distraint or proceeding in court.

SEC. 606. Revenue Act of 1928.

(a) **Authorization.**—The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commissioner) is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal-revenue tax for any taxable period ending prior to the date of the agreement.

(b) **Finality of agreement.**—If such agreement is approved by the Secretary, or the Undersecretary, within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

(c) Section 1106(b) of the Revenue Act of 1926 is repealed, effective on the expiration of 30 days after the enactment of this Act, but such repeal shall not affect any agreement made before such repeal takes effect.

NOTE.—Section 308(a) was amended by section 501 of the Revenue Act of 1934 by changing the period within which the executor may petition the Board of Tax Appeals from 60 days to 90 days, and by excluding from such period a legal holiday in the District of Columbia.

The last sentence of such section 501 reads as follows:

“The amendments made by this section shall apply only in respect of notices mailed after thirty days after the date of the enactment of this Act.”

ART. 76. Deficiency, petitions, and closing agreements.—Section 307 by its definition of the word “deficiency” provides a term which will apply to any amount of tax determined to be due in excess of the amount of tax reported by the executor, or in excess of the amount reported by the executor as adjusted by way of prior assessments, abatements, refunds, or collections without assessment. In defining the term “deficiency” section 307 recognizes two classes of cases—one, in which the executor makes a return showing some tax liability; the other, in which the executor makes a return showing no tax liability, or in which the executor fails to make a return. Additional tax, resulting from supplemental information filed after the return has been filed, is a deficiency within the meaning of the Act.

When a case is considered for the first time, the deficiency is the excess of the amount determined to be the correct amount of the tax over the amount shown as the tax by the executor on his return, or, if it is a case in which no tax was reported by the executor, the deficiency is the amount determined to be the correct amount of the tax. Subsequent information sometimes discloses that the amount previously determined to be the correct amount of the tax is less than the correct amount, and that a redetermination of the tax is necessary. In such a case the deficiency on redetermination is the excess of the amount determined to be the correct amount of the tax over the sum of the amount of tax reported by the executor and the deficiency assessed in connection with the previous determination. If it is a case in which no tax was reported by the executor, the deficiency is the excess of the amount determined to be the correct amount of the tax over the amount of the deficiency disclosed by the previous determination. If the previous determination resulted in a refund to the executor, the deficiency upon the second determination is the excess of the amount determined to be the correct amount of the tax over the amount of tax reported by the executor decreased by the amount of the tax refunded.

In all cases in which a deficiency in respect of a tax (including penalties or other additions to the tax provided by law) is determined by the Commissioner, a notice thereof will be sent to the executor by registered mail in accordance with the provisions of section 308(a) of the statute even though a jeopardy assessment (see article 77) is made. If, subsequent to the mailing of such notice, a jeopardy assessment is made in respect of the deficiency to which such notice relates no subsequent notice will be sent to the executor by the Commissioner, but if such jeopardy assessment is made, and the amount thereof is in excess of the deficiency to which the notice relates, the Commissioner will mail a notice to the executor as required by section 308(a) of the determination of such additional deficiency provided no petition has theretofore been filed with the Board of Tax Appeals. If a deficiency is determined in respect of both the tax imposed by the Revenue Act of 1926 and the additional tax imposed by the Revenue Act of 1932, notice of both deficiencies may be incorporated in the same communication.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) after the mailing of the registered letter notifying him of the final determination of a deficiency by the Commissioner, the executor may file a petition with the Board of Tax Appeals for a redetermination of the deficiency, other than a deficiency resulting from the correction of a mathematical error appearing upon the return. If notice of

the deficiency is mailed prior to, or within 30 days after, the enactment of the Revenue Act of 1934, the period within which a petition may be filed with the Board is 60 days (not counting Sunday as the sixtieth day) after mailing of the notice. (See article 77.) The right to file a petition with the Board exists whether the decedent died prior or subsequent to the enactment of the Revenue Act of 1926.

The executor and the Commissioner (or any officer or employee authorized by the Commissioner), subject to approval by the Secretary or the Under Secretary of the Treasury, may, under the provisions of section 606 of the Revenue Act of 1928, enter into a closing agreement in writing relating to the tax liability of the estate which will be final and conclusive except upon a showing of fraud or malfeasance, or misrepresentation of a material fact.

ASSESSMENT OF TAX

SEC. 305. (b) (as amended by section 808(a) of the Revenue Act of 1932) Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part not to exceed eight years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, and the running of the statute of limitations for assessment and collection, as provided in sections 310(a) and 311(b), shall be suspended for the period of any such extension. * * *

SEC. 308. * * * (b) If the executor files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the decision of the Board which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

(c) If the executor does not file a petition with the Board within the time prescribed in subdivision (a) of this section, the deficiency, notice of which has been mailed to the executor, shall be assessed, and shall be paid upon notice and demand from the collector.

(d) The executor shall at any time have the right, by a signed notice in writing filed with the Commissioner, to waive the restrictions provided in subdivision (a) of this section on the assessment and collection of the whole or any part of the deficiency.

(e) The Board shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the executor, and to determine whether any additional amount or addition to the tax should be assessed, if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) If after the enactment of this Act the Commissioner has mailed to the executor notice of a deficiency as provided in subdivision (a), and the executor files a petition with the Board within the time prescribed in such subdivision, the Commissioner shall have no right to determine any additional deficiency, except in the case of fraud, and except as provided in subdivision (e) of this section or in subdivision (c) of section 312. If the executor is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered, for the purposes of this subdivision or of subdivision (a) of this section, or of section 319, as a notice of a deficiency, and the executor shall have no right to file a petition with the Board of Tax Appeals based on such notice, nor shall such assessment or collection be prohibited by the provisions of subdivision (a) of this section.

(g) For the purposes of this title the date on which a decision of the Board becomes final shall be determined according to the provisions of section 1005. * * *

(i) (as amended by section 808(b) of the Revenue Act of 1932) Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner, with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax), may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of four years. If an extension is granted, the Commissioner may require the executor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. In such case the running of the statute of limitations for assessment and collection, as provided in sections 310(a) and 311(b), shall be suspended for the period of any such extension, and there shall be collected, * * *

SEC. 310. (a) Except as provided in section 311, the amount of the estate taxes imposed by this title shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of three years after the return was filed.

(b) (as amended by section 402 (a) of the Revenue Act of 1928) The running of the statute of limitations provided in this section or in section 311 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under subdivision (a) of section 308) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

SEC. 311. (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(b) Where the assessment of any tax imposed by this title or of any estate or gift tax imposed by prior Act of Congress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the executor.

(c) This section shall not bar a distraint or proceeding in court begun before the enactment of the Revenue Act of 1924; nor shall it authorize the assessment of a tax or the collection thereof by distraint or by proceeding in court (1) if at the time of the enactment of this Act such assessment, distraint, or proceeding was barred by the statutory period of limitation properly applicable thereto, unless prior to the enactment of this Act the Commissioner and the executor agreed in writing thereto, or (2) contrary to the provisions of subdivision (a) of section 308 of this Act.

SEC. 312. (a) If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall immediately assess such deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) and notice and demand shall be made by the collector for the payment thereof.

(b) If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under subdivision (a) of section 308, then the Commissioner shall mail a notice under such subdivision within 60 days after the making of the assessment.

(c) The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the executor, despite the provisions of subdivision (f) of section 308 and whether or not the executor has theretofore filed a petition with the Board of Tax Appeals. The Commissioner shall notify the Board of the amount of such assessment, if the petition is filed with the Board before the making of the assessment or is subsequently filed, and the Board shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) If the jeopardy assessment is made after the decision of the Board is rendered such assessment may be made only in respect of the deficiency determined by the Board in its decision.

(e) A jeopardy assessment may not be made after the decision of the Board has become final or after the executor has filed a petition for review of the decision of the Board.

(f) When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as

the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in subdivision (j) of this section.

(g) If the bond is given before the executor has filed his petition with the Board under subdivision (a) of section 308, the bond shall contain a further condition that if a petition is not filed within the period provided in such subdivision, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision.

* * * * *

(i) When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector. * * *

SEC. 318. (a) If after the enactment of this Act the Commissioner determines that any assessment should be made in respect of any estate or gift tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or by any such Act as amended, the Commissioner is authorized to send by registered mail to the person liable for such tax notice of the amount proposed to be assessed, which notice shall, for the purposes of this Act, be considered a notice under subdivision (a) of section 308 of this Act. In the case of any such determination the amount which should be assessed (whether as deficiency or additional tax or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in case of delinquency in payment after notice and demand and the provisions prohibiting claims and suits for refund) as in the case of a deficiency in the tax imposed by this title, except that in the case of an estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, the period of limitation prescribed in section 1109 of this Act shall be applied in lieu of the period prescribed in subdivision (a) of section 310. * * *

SEC. 1109 (as amended by section 619 (a), Revenue Act of 1928).
(a) Except in the case of * * * estate, and gift taxes—

(1) Notwithstanding the provisions of section 3182 of the Revised Statutes or any other provision of law, all internal-revenue taxes shall (except as provided in paragraph (2) or (3) of this subdivision) be assessed within four years after such taxes became due, and no pro-

ceeding in court without assessment for the collection of such taxes shall be begun after the expiration of five years after such taxes became due.

(2) In case of a false or fraudulent return with intent to evade tax, of a failure to file a return within the time required by law, or of a willful attempt in any manner to defeat or evade tax, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(3) Where the assessment of any tax imposed by this Act or by prior Act of Congress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (A) within six years after the assessment of the tax, or (B) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer.

(b) This section shall not bar a distraint or proceeding in court begun before the enactment of the Revenue Act of 1924; nor shall it authorize the assessment of a tax or the collection thereof by distraint or by proceeding in court if at the time of the enactment of this Act such assessment, distraint, or proceeding was barred by the statutory period of limitation properly applicable thereto, unless prior to the enactment of this Act the Commissioner and the taxpayer agreed in writing thereto.

SEC. 403. Revenue Act of 1932.

Except as provided in section 402, the tax imposed by section 401 of this Act shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by section 301 (a) of the Revenue Act of 1926, * * *.

SEC. 310. (b) (as originally enacted) The running of the statute of limitations provided in this section or in section 311 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under subdivision (a) of section 308) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court, and for 60 days thereafter.

NOTE.—The above subdivision was amended by section 402(a) of the Revenue Act of 1928, by inserting the following: “(and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Board, until the decision of the Board becomes final)”. Section 402(b) of the Revenue Act of 1928 reads as follows:

“Subsection (a) of this section shall apply in all cases where the period of limitation has not expired prior to the enactment of this Act.”

ART. 77. Assessments.—In any case in which the Commissioner believes that the assessment or collection of a deficiency tax will be jeopardized by delay, he will make an immediate assessment thereof. In such case the assessment may be made before the mailing

of the notice provided by section 308(a), or at any time thereafter prior to the filing of a petition for a review by the court of a decision rendered by the Board. If the jeopardy assessment is made subsequent to a decision of the Board, then the assessment is limited to the amount of the deficiency determined by the Board. If the jeopardy assessment is made before any notice in respect of the deficiency to which the jeopardy assessment relates has been mailed under subdivision (a) of section 308, the Commissioner will mail a notice as provided by such subdivision within 60 days after the making of such jeopardy assessment.

If an amount of tax in excess of that shown upon the return is determined to be due as a result of the correction of a mathematical error appearing upon the face of the return, the executor will be duly notified and an assessment made of the tax which would have been the correct tax but for the mathematical error. The notice that the correct amount of the tax has been assessed will not be a notice of a deficiency within the meaning of subdivision (a) of section 308 or section 319 and the executor has no right to file a petition with the Board of Tax Appeals based upon such notice.

If a petition is filed with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final will be assessed, except such portion as may have been assessed as a jeopardy assessment. If no petition is filed with the Board within the time prescribed in section 308 (a), the deficiency, notice of which has been mailed to the executor, will be assessed. If the executor by a signed notice in writing filed with the Commissioner waives the restrictions on the assessment and collection of the whole or any part of a deficiency, assessment of such whole or part will be made immediately. (As to payment, see articles 78 to 85, inclusive.)

All assessments against executors (as to assessments against transferees and fiduciaries, see article 105), except in the case of a false or fraudulent return, or of a failure to file a return within the time required by law, must be made within three years after the return was filed (four years after the due date of the tax if the decedent died prior to the effective date of the Revenue Act of 1924). If notice of a deficiency is mailed in accordance with the provisions of subdivision (a) of section 308, then the period within which assessment thereof is required to be made is extended for the period during which the Commissioner is prohibited from making the assessment and for 60 days thereafter. If a proceeding in respect of the deficiency is placed on the docket of the Board, the period within which assessment is required to be made is extended until the decision of the Board becomes final and for 60 days thereafter. If an extension

of time for payment of the tax is granted in accordance with section 305(b) or section 308(i), as amended by section 808 of the Revenue Act of 1932, the period within which assessment is required to be made is extended by the time covered by such extension.

In case of a false or fraudulent return with intent to evade the tax, or of a failure to file a required return, the tax may be assessed, or proceedings in court for collection may be begun without assessment, at any time.

PAYMENT OF AND RECEIPTS FOR TAXES

SEC. 305. (a) (as amended by section 203(a) of the Revenue Act of 1935) The tax imposed by this title shall be due and payable fifteen months after the decedent's death, and shall be paid by the executor to the collector. * * *

SEC. 308. * * * (b) If the executor files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. * * *

(c) If the executor does not file a petition with the Board within the time prescribed in subdivision (a) of this section, the deficiency, notice of which has been mailed to the executor, shall be assessed, and shall be paid upon notice and demand from the collector. * * *

SEC. 313. (a) The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts. * * *

SEC. 1118. (a) Collectors may receive, * * * uncertified checks in payment of income, war-profits, and excess-profits taxes and any other taxes payable other than by stamp, during such time and under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions to the same extent as if such check had not been tendered.

SEC. 305. (a) (as originally enacted) The tax imposed by this title shall be due and payable one year after the decedent's death, and shall be paid by the executor to the collector. * * *

NOTE.—The above subdivision was amended by section 203(a) of the Revenue Act of 1935 by substituting "fifteen months" for "one year". Section 203(c) of the Revenue Act of 1935 reads as follows:

"The amendments made by this section shall be effective only with respect to transfers of estates of decedents dying after the date of the enactment of this Act."

ART. 78. **Payment of tax; General.**—The tax is due and must be paid within 15 months from the date of death if the decedent died on or after August 31, 1935, or within 1 year from the date of death if

the decedent died before August 31, 1935, unless an extension of time for payment thereof has been granted by the Commissioner. (See also article 82.) If the tax is due 15 months after the decedent's death, the due date is the day of the fifteenth calendar month after his death numerically corresponding to the day of the calendar month in which death occurred, except that, if there is no numerically corresponding day in such fifteenth month, the last day of such fifteenth month is the due date. For example, if the decedent died on August 31, 1937, the due date is November 30, 1938. No discount will be allowed for payment in advance of the due date. The collector will grant to the person paying the tax duplicate receipts, either of which will be sufficient evidence of such payment and entitle the executor to be credited with the amount by any court having jurisdiction to audit or settle his accounts.

Following an investigation of the return, the tax liability will be determined by the Commissioner. If the amount of tax shown on the return has been paid and exceeds the amount of tax as determined, a certificate of overassessment will be prepared and issued, regardless of whether or not a claim for refund of such excess payment is filed unless refundment of such excess is barred by the statute of limitations, or such excess is otherwise not refundable, as in the case of a compromise (see article 101), a closing agreement (see article 76) conclusively fixing the amount of tax liability, or an estoppel. If the amount of tax as determined exceeds the amount of tax already paid but is less than the amount shown on the return, the executor will be notified of the amount of the unpaid tax and payment thereof should be made to the collector. If the audit of the return does not disclose a deficiency tax or overpayment the executor will be notified to that effect. If, as a result of the audit of the return, a deficiency in respect of the tax is finally determined and such deficiency is in whole or in part assessed (see article 77), the executor should pay the amount of the deficiency assessed upon notice and demand from the collector, except in the case a stay of the collection of a jeopardy assessment is obtained by the filing of a bond (see article 96), or an extension of time for payment is granted (see article 83). Until any tax determined by the Commissioner, including any deficiency, is assessed, the executor should reserve a sufficient portion of the estate to satisfy any unpaid assessment.

ART. 79. The executor shall pay the tax.—The statute provides that the executor shall pay the tax. This duty applies to the entire tax, regardless of the fact that the gross estate consists in part of property which will not come into his possession. If there is no duly qualified executor or administrator, all persons in actual or constructive possession of any property of the decedent are liable for

and required to pay the tax to the extent of the value of such property. (See section 300 (a). As to the personal liability of the executor, see article 102.)

ART. 80. Payment by check.—Collectors may accept uncertified checks in payment of the tax, provided such checks are collectible at par, that is, for the full amount, without any deduction for exchange or other charges. The collector will stamp upon the face of each check before deposit thereof the words "This check is in payment of an obligation to the United States and must be paid at par. No protest." This should be followed by his name and title. The day on which the check is received will be considered the date of payment so far as the taxpayer is concerned, unless the check is returned dishonored. If the bank on which a check is drawn should refuse to pay it at par, the check should be returned through the depositary bank.

All expenses incident to the attempt to collect such a check and the return of it through the depositary bank must be paid by the drawer of the check to the bank on which it is drawn. (See section 3210 of the Revised Statutes, as amended, reenacted by section 1128(b) of the Revenue Act of 1926.) In the case a check has been returned uncollected by the depositary bank, the collector should proceed to collect the tax as though no check had been given, and the taxpayer will remain liable for payment of the tax and for all interest, legal penalties and additions, if any attach, to the same extent as though such check had not been tendered. A taxpayer who tenders a certified check in payment of the tax is not released from his obligation until the check has been paid. (See U. S. C., 1934 edition, Title 26, section 1546(a).)

Treasury Department Circular No. 176, as amended, prescribes detailed regulations governing the deposit and collection of checks. Collectors are referred to paragraphs 13-16 and paragraph 26 thereof as to the deposit of taxpayers' checks and the handling of uncollected or lost items.

ART. 81. Payment with bonds of the United States.—Payment of the tax may be made with certain bonds of the United States in accordance with section 14 of the Second Liberty Bond Act, as amended (U. S. C., 1934 edition, Title 31, section 765), and Department Circular 225, as amended and supplemented, issued pursuant thereto. Such bonds must bear interest at a higher rate than 4 per cent per annum, and are receivable at par value, together with interest accrued at the time of payment, provided they were owned by the decedent continuously for at least six months prior to the date of his death, and upon such date constituted a part of his gross estate.

EXTENSION OF TIME FOR PAYMENT OF TAX

SEC. 305. * * * (b) (as amended by section 808(a) of the Revenue Act of 1932) Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part not to exceed eight years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, and the running of the statute of limitations for assessment and collection, as provided in sections 310(a) and 311(b), shall be suspended for the period of any such extension. If an extension is granted, the Commissioner may require the executor to furnish a bond in such amount, not exceeding double the amount in respect of which the extension is granted, and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the amount in respect of which the extension is granted in accordance with the terms of the extension. * * *

(e) (as added by section 811(a) of the Revenue Act of 1932) Where there is included in the value of the gross estate the value of a reversionary or remainder interest in property, the payment of the part of the tax imposed by this title attributable to such interest may, at the election of the executor, be postponed until six months after the termination of the precedent interest or interests in the property, and the amount the payment of which is so postponed shall then be payable, together with interest thereon at the rate of 4 per centum per annum from eighteen months after the date of the decedent's death until such amount is paid. The postponement of payment of such amount shall be under such regulations as the Commissioner with the approval of the Secretary may prescribe, and shall be upon condition that the executor, or any other person liable for the tax, shall furnish a bond in such an amount, and with such sureties, as the Commissioner deems necessary, conditioned upon the payment within six months after the termination of such precedent interest or interests of the amount the payment of which is so postponed, together with interest thereon, as above provided. Such part of any estate, inheritance, legacy, or succession taxes allowable as a credit against the tax imposed by this title as is attributable to such reversionary or remainder interest may be allowed as a credit against the tax attributable to such interest, subject to the percentage limitation contained in section 301(c), if such part is paid, and credit therefor claimed, at any time prior to the expiration of 60 days after the termination of the precedent interest or interests in the property.

NOTE.—Section 811(b) of the Revenue Act of 1932 reads as follows:

"The amendment to section 305 of the Revenue Act of 1926 made by subsection (a) of this section, shall not apply, in the case of estates of decedents dying prior to the date of the enactment of this Act, to that part of any payment of Federal estate taxes made prior to such date which is attributable to a reversionary or remainder interest in property."

SEC. 308. * * * (i) (as amended by section 808(b) of the Revenue Act of 1932) Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner, with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax), may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of four years. If an extension is granted, the Commissioner may require the executor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. In such case the running of the statute of limitations for assessment and collection, as provided in sections 310(a) and 311(b), shall be suspended for the period of any such extension, and there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. If the part of the deficiency the time for payment of which is so extended is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 1 per centum a month for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period.

NOTE.—Section 404 of the Revenue Act of 1935 had the effect of changing the rate of interest of 1 per centum a month provided in the above subdivision to 6 per centum per annum for any period after August 30, 1935. Such section 404 reads as follows:

“Notwithstanding any provision of law to the contrary, interest accruing during any period of time after the date of the enactment of this Act upon any internal-revenue tax (including amounts assessed or collected as a part thereof) or customs duty, not paid when due, shall be at the rate of 6 per centum per annum.”

ART. 82. (a) **Extension of time for payment of tax shown on return.**—In any case in which the Commissioner finds that payment, on the due date, of the tax shown on the return would impose undue hardship upon the estate, an extension or extensions of time will be granted for the payment of the tax for a period not to exceed in all eight years from the due date. Extensions of time for tax payment will be granted only in exceptional cases, and those in which it is evident that the payment of the tax on or before the due date would impose upon the estate undue hardship. What constitutes “undue hardship” depends upon the facts in the particular case.

An application for an extension of time for the payment of the tax must be in writing and must contain, or be supported by, sufficient information under oath from which the Commissioner may deter-

mine whether undue hardship would result if the requested extension were refused.

As a condition to the granting of such an extension the Commissioner may require that a penal bond be furnished in an amount not exceeding double the amount for which the extension is desired. If a bond is to be furnished it must be filed with the collector within 10 days after notification by the Commissioner that such bond is required, and shall be conditioned upon the payment, in accordance with the terms of the extension granted, of the tax involved, including any interest thereon, and shall be executed by a surety or sureties, and shall be subject to the approval of the Commissioner. In lieu of such surety or sureties, the bond may be secured by the deposit of bonds or notes of the United States, any public debt obligations of the United States, or any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, equal in their total par value to the amount of such bond. (See section 1126 of the Revenue Act of 1926, as amended by section 7 of the Act of February 4, 1935, U. S. C., 1934 edition, Sup. II, Title 6, section 15.)

No single extension for more than one year will be granted. Application for extension of time for payment should be filed with the collector, who will refer it to the Commissioner with suitable recommendations.

An extension of time to pay the tax does not relieve the executor from the duty of filing the return on or before the date fixed by the regulations, nor will it operate to prevent the running of interest. (See articles 84 and 85.) An extension of time to pay the tax may extend the period within which taxes allowed as a credit by section 301(c) are required to be paid and the credit therefor claimed. (See article 9.) The running of the statute of limitations for assessment and collection, as provided in sections 310(a) and 311(b), is suspended for the period of the extension. (See articles 77 and 105.)

All applications for extensions of time for payment of tax must be made before the due date of such tax. If the executor desires to obtain an additional extension, the application therefor must be filed with the collector on or before the date of the expiration of the previous extension.

The granting of an extension of time for paying the tax is discretionary with the Commissioner and such authority will be exercised under such conditions as he may deem advisable.

(b) Extension of time for payment of tax attributable to a reversionary or remainder interest.—In the case there is included in the gross estate a reversionary or remainder interest in property, the payment of the part of the tax attributable to such interest, except such part of such tax as was paid prior to the enactment of the Revenue Act of

1932, may, at the election of the executor, be postponed until six months after the termination of the precedent interest or interests in the property. This provision is limited to cases in which the reversionary or remainder interest is included in the decedent's gross estate as such and does not extend to cases in which the decedent creates future estates by his own testamentary act.

Notice of the exercise of the election to postpone the payment of the tax attributable to a reversionary or remainder interest should be filed with the Commissioner before the date prescribed for payment of the tax. There should be filed with the notice of election a certified copy of the will or other instrument under which the reversionary or remainder interest was created. The Commissioner may require the submission of such additional proof as is deemed necessary to disclose the complete facts. If the duration of the precedent interest is dependent upon the life of any person, the application must show the date of birth of such person.

As a prerequisite to the postponement of the payment of the tax attributable to a reversionary or remainder interest, a bond must be furnished in such an amount (at least double the amount of the tax and interest for the estimated duration of the precedent interest), and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the tax and interest accrued thereon within six months after the termination of the precedent interest. In case the duration of the precedent interest is dependent upon the life or lives of any person or persons, or is otherwise indefinite, the bond must be further conditioned upon the principal or surety promptly notifying the Commissioner when such precedent interest terminates and upon the principal or surety notifying the Commissioner during the month of September of each year as to the continuance of the precedent interest. If after the acceptance of a bond it is determined that the amount of the tax attributable to the reversionary or remainder interest was understated in the bond, a new bond or a supplemental bond may be required, or such tax to the extent of the understatement may be collected.

If the decedent's gross estate consists of both a reversionary or remainder interest in property and other property, the tax attributable to the reversionary or remainder interest, within the meaning of section 305(e) and this article, is an amount which bears the same ratio to the total tax which the value of the reversionary or remainder interests bears to the entire gross estate, subject to the following qualification: In determining the ratio, the value of the reversionary or remainder interest should be reduced by (1) the amount of claims, mortgages, and indebtedness which is a lien upon such interest; (2) losses in respect of such interest during the settlement of the estate which are deductible under the pro-

visions of subdivisions (a)(1) and (b)(1) of section 303; (3) any amount in respect of such interest identified as previously taxed property under the provisions of subdivisions (a)(2) and (b)(2) of section 303; (4) any amount deductible on account of devises or bequests of such interests to charitable, etc., uses as described in subdivisions (a)(3) and (b)(3) of section 303. In determining the ratio, the gross estate should likewise be reduced by such deductions having similar relationship to items in the gross estate other than the remainder or reversionary interest.

If the time for payment of the Federal estate tax attributable to a reversionary or remainder interest in property is postponed, all estate, inheritance, legacy, or succession taxes allowable as a credit under the provisions of section 301(c) of the Revenue Act of 1926, as amended, which are paid and for which credit is claimed within the period provided in such section, will be allowed not to exceed 80 per cent, respectively, of that portion of the Federal estate tax attributable to such interest and to that portion attributable to the other property, and will be applied first to the respective portion of the Federal estate tax which is attributable to the same interests in property to which the estate, inheritance, legacy, or succession taxes are attributable. Estate, inheritance, legacy, or succession taxes, as described in section 301(c) of the Revenue Act of 1926, as amended, which are attributable to the reversionary or remainder interest and which are paid and for which credit is claimed after the expiration of the period provided in section 301(c) will also be allowed as a credit against the Federal estate tax attributable to such interest (limited by the requirement that the total credit may not exceed 80 per cent of the total Federal estate tax) if such taxes are paid and credit therefor is claimed prior to the expiration of 60 days after the termination of the preceding interest or interests in the property.

Example: The Federal estate tax attributable to the reversionary or remainder interest is \$5,000, and that attributable to all other property is \$10,000. The estate, inheritance, legacy, or succession taxes paid to the State within the 4-year period are \$9,000, all attributable to property other than the reversionary or remainder interest. Of this \$9,000, the maximum of \$8,000 is credited against the Federal estate tax of \$10,000 attributable to property other than the reversionary or remainder interest, and the balance of \$1,000 is credited to the Federal estate tax attributable to the reversionary interest. Accordingly, the estate will be required to pay \$2,000 (Federal estate tax of \$10,000 attributable to property other than the reversionary or remainder interest, minus the credit of \$8,000) at once, and an extension will be allowed for payment of \$4,000

(Federal estate tax of \$5,000 attributable to the reversionary interest, minus credit of \$1,000). After expiration of the 4-year period, but before expiration of 60 days after termination of the life estate or precedent interest, the estate pays additional State estate, inheritance, legacy, or succession taxes of \$5,000 attributable to the reversionary or remainder interest. As the maximum credit is \$12,000 (80 per cent of \$15,000, the total Federal estate tax) and \$9,000 has already been allowed, there will be an additional allowance of \$3,000, and the estate will be required to pay \$1,000 at the end of the extension period.

If any estate, inheritance, legacy, or succession taxes are imposed by any of the several States, Territories, or the District of Columbia upon a reversionary or a remainder interest in property and other property, without definitely apportioning the tax between such classes of property, for the purposes of this article the amount of such estate, inheritance, legacy, or succession taxes which will be deemed to be attributable to the reversionary or remainder interest will be an amount which bears the same ratio to the total of such taxes as the value of such property bears to the value of the decedent's entire estate upon which the estate, inheritance, legacy, or succession tax was imposed. In determining the ratio, reduction will be made in the value of the reversionary or remainder interest and the value of the gross estate as previously provided in this article for determining the Federal estate tax attributable to the reversionary or remainder interest.

If any part of the tax was paid prior to the enactment of the Revenue Act of 1932, and the gross estate consists of both a reversionary or remainder interest and other property, the portion of the tax so paid attributable to the reversionary or remainder interest is an amount which bears the same ratio to the total tax so paid which the entire tax attributable to the remainder or reversionary interest, computed as provided in this article, bears to the total tax.

The amount of tax the payment of which is postponed under the provisions of section 305 (e) bears interest at the rate of 4 per cent per annum from 18 months after the date of the decedent's death until such amount is paid. (See article 84(b).)

ART. 83. Extension of time for payment of deficiency tax.—In any case in which the Commissioner finds that payment of the deficiency tax upon the date prescribed for the payment thereof would impose undue hardship upon the estate, an extension or extensions of time will be granted for payment, with the approval of the Secretary, for a period not to exceed in all four years from the date prescribed for the payment of the deficiency. Extension of time for such payment will be granted only in exceptional cases and those in which it is

evident that payment on or before the date prescribed for payment of the deficiency would impose undue hardship. This provision applies to all estates, regardless of the date of the decedent's death.

What constitutes "undue hardship" depends upon the facts in the particular case. No extension will be granted where the deficiency is due to negligence or intentional disregard of the rules and regulations, or to fraud with intent to evade the tax.

Any application for an extension of time for the payment of a deficiency must be in writing and must contain, or be supported by, information under oath showing wherein undue hardship would result if the extension were refused.

As a condition to the granting of such an extension the Commissioner may require that a penal bond be furnished in an amount not exceeding double the amount of the deficiency. If a bond is to be furnished it must be filed with the collector within 10 days after notification by the Commissioner that such bond is required, and shall be conditioned upon the payment of the deficiency in accordance with the terms of the extension granted, including interest upon the deficiency, as prescribed by the statute (see article 85), until the deficiency is paid, and shall be executed by a surety or sureties and shall be subject to the approval of the Commissioner. In lieu of such surety or sureties, the bond may be secured by the deposit of bonds or notes of the United States, any public debt obligations of the United States, or any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, equal in their total par value to the amount of such bond. (See section 1126 of the Revenue Act of 1926, as amended by section 7 of the Act of February 4, 1935, U. S. C., 1934 edition, Sup. II, Title 6, section 15.) No single extension for more than one year will be granted. Application for extension of time for payment should be filed with the collector. The collector will refer the application to the Commissioner with suitable recommendations.

Application for extension of time for payment of a deficiency must be made on or before the date prescribed for payment thereof, as shown by the notice and demand from the collector. If the executor desires to obtain an additional extension, the application therefor must be filed with the collector on or before the date of the expiration of the previous extension.

An extension of time to pay the deficiency will not operate to prevent the running of interest. (See article 85.) An extension of time to pay the deficiency may extend the period within which taxes allowed as a credit by section 301(c) are required to be paid and the credit therefor claimed. (See article 9.) The running of the statute of limitations for assessment and collection, as provided in sections

310(a) and 311(b), is suspended for the period of the extension. (See articles 77 and 105.) No extension of time for paying a deficiency will be granted until after the assessment thereof and notice and demand for payment has been made by the collector.

The granting of an extension of time for paying the deficiency is discretionary with the Commissioner and the Secretary, and such authority will be exercised under such conditions as may be deemed advisable.

INTEREST ON TAX

SEC. 305. * * * (c) (as amended by section 203(b) of the Revenue Act of 1935) If the time for the payment is thus extended there shall be collected, as a part of such amount, interest thereon at the rate of 6 per centum per annum from the expiration of three months after the due date of the tax to the expiration of the period of the extension. * * *

NOTE.—Section 305(c) was amended by section 203(b) of the Revenue Act of 1935 by substituting “three months” for “six months”. Section 203(c) of the Revenue Act of 1935 reads as follows:

“The amendments made by this section shall be effective only with respect to transfers of estates of decedents dying after the date of the enactment of this Act.”

(e) (as added by section 811(a) of the Revenue Act of 1932) Where there is included in the value of the gross estate the value of a reversionary or remainder interest in property, the payment of the part of the tax imposed by this title attributable to such interest may, at the election of the executor, be postponed until six months after the termination of the precedent interest or interests in the property, and the amount the payment of which is so postponed shall then be payable, together with interest thereon at the rate of 4 per centum per annum from eighteen months after the date of the decedent's death until such amount is paid. * * *

SEC. 308. * * * (h) Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the due date of the tax to the date the deficiency is assessed, or, in the case of a waiver under subdivision (d) of this section, to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier.

(i) (as amended by section 808(b) of the Revenue Act of 1932) Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner, with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax), may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of four years. If an extension is granted, the Commissioner may require the executor to furnish a bond in such amount, not

exceeding double the amount of the deficiency, and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. In such case the running of the statute of limitations for assessment and collection, as provided in sections 310(a) and 311(b), shall be suspended for the period of any such extension, and there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. If the part of the deficiency the time for payment of which is so extended is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 1 per centum a month for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period.

NOTE.—Section 404 of the Revenue Act of 1935 had the effect of changing the rate of interest of 1 per centum a month provided in the above subdivision to 6 per centum per annum for any period after August 30, 1935. Such section 404 reads as follows:

“Notwithstanding any provision of law to the contrary, interest accruing during any period of time after the date of the enactment of this Act upon any internal-revenue tax (including amounts assessed or collected as a part thereof) or customs duty, not paid when due, shall be at the rate of 6 per centum per annum.”

(j) The 50 per centum addition to the tax provided by section 3176 of the Revised Statutes, as amended, shall, when assessed after the enactment of this Act in connection with an estate tax, be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of subdivision (h) of this section shall not be applicable.

SEC. 309. (a) (1) Where the amount determined by the executor as the tax imposed by this title, or any part of such amount, is not paid on the due date of the tax, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 1 per centum a month from the due date until it is paid.

(2) Where an extension of time for payment of the amount so determined as the tax by the executor has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under subdivision (c) of section 305, is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subdivision, interest at the rate of 1 per centum a month shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

NOTE.—See note under section 308(i).

(b) Where a deficiency, or any interest assessed in connection therewith under subdivision (h) of section 308, or any addition to the tax provided for in section 3176 of the Revised Statutes, as amended, is not paid in full within 30 days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest

upon the unpaid amount at the rate of 1 per centum a month from the date of such notice and demand until it is paid.

NOTE.—See note under section 308(i).

(c) If a bond is filed, as provided in section 312, the provisions of subdivision (b) of this section shall not apply to the amount covered by the bond.

SEC. 312. * * * (f) When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in subdivision (j) of this section.

(g) If the bond is given before the executor has filed his petition with the Board under subdivision (a) of section 308, the bond shall contain a further condition that if a petition is not filed within the period provided in such subdivision, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision. * * *

(i) When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

(j) In the case of the amount collected under subdivision (i) there shall be collected at the same time as such amount, and as a part of the tax, interest at the rate of 6 per centum per annum upon such amount from the date of the jeopardy notice and demand to the date of notice and demand under subdivision (i) of this section, or, in the case of the amount collected in excess of the amount of the jeopardy assessment, interest as provided in subdivision (h) of section 308. If the amount included in the notice and demand from the collector under subdivision (i) of this section is not paid in full within 30 days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 1 per centum a month from the date of such notice and demand until it is paid.

NOTE.—See note under section 308(i).

ART. 84. (a) Interest on tax shown on return.—If any portion of the tax shown on the executor's return is not paid on or before the due date, and no extension of time for payment thereof has been granted, such unpaid portion bears interest from the due date until payment is received by the collector at the rate of 6 per cent per annum (except that during any part of such period of time prior to August 31, 1935, interest accrues at the rate of 1 per cent a month).

If an extension of time has been granted for paying any portion of the tax shown on the executor's return, in accordance with article 82(a), interest accrues thereon at the rate of 6 per cent per annum from the expiration of 18 months after the decedent's death to the expiration of the period of the extension. If the amount of the tax, the time for payment of which has been extended, together with any interest accrued thereon, is not paid in full on or before that date of the expiration of the extension, the total unpaid amount (tax and any accrued interest) bears interest from the expiration of the extension until payment is received by the collector at the rate of 6 per cent per annum (except that during any part of such period of time prior to August 31, 1935, interest accrues at the rate of 1 per cent a month).

Interest at 6 per cent per annum is computed on the basis of 365 days to the year, or 366 days in a leap year. Interest at the rate of 1 per cent a month is computed on the basis of a calendar month, i. e., a period (save one beginning on the first day of a calendar month) terminating with the day of the succeeding calendar month numerically corresponding with the day preceding the beginning of the period. If there is no corresponding day of the succeeding calendar month, the last day of such succeeding month is the last day of the period. If interest at the rate of 1 per cent a month is to be computed for one or more months and a fraction of a month, it should be computed for the number of whole months, and then for the fraction upon the basis of the number of days of the calendar month in which the first day of the fraction falls. Thus, for example, a period beginning with February 14 and ending on March 13, is one month, and a period beginning with February 14 and ending on March 11, is twenty-six twenty-eighths of a month, except that if the year be a leap year the period is twenty-seven twenty-ninths of a month.

(b) Interest on tax attributable to a reversionary or remainder interest.—If the time for the payment of the tax attributable to a reversionary or remainder interest is postponed in accordance with the provisions of section 305(e), as added by section 811(a) of the Revenue Act of 1932, the amount the payment of which is so postponed will bear interest at the rate of 4 per cent per annum from 18 months

after the date of the decedent's death until such amount is paid. However, if the amount of the tax, the time for payment of which is so postponed, together with interest accrued thereon, is not paid in full on or before the date of the expiration of the period of the postponement (six months after the termination of the precedent interest or interests in the property), the unpaid amount bears interest at the rate of 6 per cent per annum from the date of the expiration of the period of the postponement until payment is received by the collector.

ART. 85. Interest on deficiency tax.—The statute provides that any deficiency shall bear interest at the rate of 6 per cent per annum from the due date for payment of the tax (15 months after the date of death if the decedent died on or after August 31, 1935, or 1 year after the date of death if the decedent died before August 31, 1935) to the date the deficiency is assessed, except in the case of a waiver of the restrictions against the assessment and collection of the deficiency, and that such interest shall be assessed at the same time as the deficiency of which it becomes an integral part. The deficiency in respect to which the restrictions against the assessment and collection are waived under section 308(d) bears interest at the rate of 6 per cent per annum from the due date of the tax to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed, whichever is the earlier. The term "deficiency" includes any tax resulting from the correction of a mathematical error appearing upon the face of a return. (See second paragraph of article 77.)

If any portion of the deficiency assessed is not paid within 30 days from the date of the notice and demand issued by the collector (except a deficiency or any part thereof with respect to which a jeopardy assessment is made and collection is stayed by the filing of a bond), and no extension of time for payment thereof has been granted, such unpaid portion bears interest from the date of the notice and demand until payment is received by the collector at the rate of 6 per cent per annum (except that during any part of such period of time prior to August 31, 1935, interest accrues at the rate of 1 per cent a month).

If an extension of time is granted for paying any portion of the deficiency assessed, in accordance with article 83, interest accrues thereon at the rate of 6 per cent per annum for the period of the extension, i. e., from the date prescribed for the payment (30 days after the date of the notice and demand) to the expiration of the period of the extension. If the amount of the deficiency, the time for payment of which has been extended, together with interest accrued thereon, is not paid in full on or before the date of the expiration of the extension, the total unpaid amount (tax, interest and any addition thereto) bears interest from the expiration of the extension

until payment is received by the collector at the rate of 6 per cent per annum (except that during any part of such period of time prior to August 31, 1935, interest accrues at the rate of 1 per cent a month).

Any addition to the tax resulting from the imposition of an ad valorem penalty under the provisions of section 3176, Revised Statutes, as amended, or section 406 of the Revenue Act of 1935, is subject to the same provisions of law relating to the assessment, collection, and the accrual of interest, as the deficiency tax, except that such addition to the tax is not subject to any interest between the due date for payment of the tax (15 months after the date of death if the decedent died on or after August 31, 1935, or 1 year after the date of death if the decedent died before August 31, 1935) and the date of the assessment thereof.

If a stay of the collection of a jeopardy assessment of a deficiency tax, or any addition to the tax resulting from the imposition of an ad valorem penalty, is obtained and a petition for a redetermination of the deficiency is filed with the Board of Tax Appeals, interest accrues on such unpaid portion of the deficiency or penalty, if any, determined by a decision of the Board which is made final, at the rate of 6 per cent per annum from the date of the notice and demand from the collector following the jeopardy assessment to the date of the notice and demand by the collector subsequent to the final action taken on the petition filed with the Board. If the amount which the Board determines should have been assessed is not paid in full within 30 days from the date of such notice and demand issued subsequent to the decision of the Board which has become final, interest accrues upon the unpaid amount from the date of such notice and demand until it is paid at the rate of 6 per cent per annum (except that during any part of such period of time prior to August 31, 1935, interest accrues at the rate of 1 per cent a month). If the amount (exclusive of any ad valorem penalty) determined by the Board as the amount which should be assessed is greater than the amount actually assessed the difference bears interest at the rate of 6 per cent per annum from the due date of the tax until assessment of such difference. If the collection of the jeopardy assessment is stayed, and no petition is filed with the Board for a redetermination of the deficiency, interest accrues upon the deficiency so assessed at the rate of 6 per cent per annum from the date of the jeopardy notice and demand to the date of the notice and demand made by the collector after the expiration of the 90 days from the mailing by the Commissioner of the notice of the deficiency. If such amount is not paid within 30 days from the date of such further notice and demand, interest accrues upon the unpaid amount from the date of such further notice and demand until it is paid at the rate of 6 per cent per annum (except that during

any part of such period of time prior to August 31, 1935, interest accrues at the rate of 1 per cent a month).

For method of computing interest at 6 per cent per annum or at 1 per cent a month see last paragraph of article 84(a).

COLLECTION OF TAX

SEC. 314. (a) If the tax herein imposed is not paid on or before the due date thereof the collector shall, upon instruction from the Commissioner, proceed to collect the tax under the provisions of general law, or commence appropriate proceedings in any court of the United States having jurisdiction, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. This subdivision in so far as it applies to the collection of a deficiency shall be subject to the provisions of section 308.

ART. 86. Remedy not exclusive.—The remedy by action, here provided, is not exclusive. For other available remedies for the collection of the tax, see article 105.

REIMBURSEMENT

SEC. 314. * * * (b) If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution. If any part of the gross estate consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds, in excess of \$40,000, of such policies bear to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio.

ART. 87. Right to reimbursement not enforceable by Commissioner.—If any portion of the tax is paid by or collected out of that part of the estate passing to, or in the possession of, any person other than the duly qualified executor or administrator, such person may be entitled to reimbursement, either out of the undistributed estate or by contribution from other beneficiaries whose shares or interests in the

estate would have been reduced had the tax been paid before distribution of the estate, or whose shares or interests are subject either to an equal or prior liability for the payment of taxes, debts, or other charges against the estate. The executor is entitled to require beneficiaries under insurance policies to bear their proportion of the tax. These provisions, however, are not designed to curtail the right of the Commissioner to collect the tax from any person, or out of any property, liable therefor. The Commissioner can not be required to apportion the tax among the persons liable, nor to enforce any right to reimbursement or contribution.

LIEN

SEC. 315 (as amended by section 613(b) of the Revenue Act of 1928, and as further amended by section 803(c) and section 809 of the Revenue Act of 1932).

(a) Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

(b) If (1) except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death, or makes a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession or enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom, or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

SEC. 313. * * * (b) If the executor makes written application to the Commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Commissioner (as soon

as possible, and in any event within one year after the making of such application, or, if the application is made before the return is filed, then within one year after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in section 310) shall notify the executor of the amount of the tax. The executor, upon payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

(c) The provisions of subdivision (b) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless the title to such part of the gross estate has passed to a bona fide purchaser for value, in which case such part shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

ART. 88. Property subject to lien.—The lien imposed by section 315 attaches at the date of the decedent's death to every part of the gross estate, whether or not the property comes into the possession of the duly qualified executor or administrator. It attaches to the extent of the tax shown to be due by the return and of any deficiency tax found to be due upon review and audit.

The lien upon the entire property constituting the gross estate continues for a period of 10 years after the decedent's death, except—

(1) If the tax is paid in full before the expiration of such period.

(2) Such portion of the gross estate as is used for the payment of charges against the estate and expenses of its administration allowed by any court having jurisdiction thereof.

(3) Such portion of the gross estate as has passed to a bona fide purchaser for value after payment of the full amount of tax determined by the Commissioner pursuant to a request of the executor for discharge from personal liability, as authorized by section 313 (b) and (c) (see article 67), but there is substituted a like lien upon the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

(4) Such property as was received from the decedent as a transfer by trust or otherwise in contemplation of or intended to take effect in possession or enjoyment at or after his death, or under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession or enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom (except in case the transfer was a bona fide sale for an adequate and full consideration in money or money's worth), and was sold by the transferee to a

bona fide purchaser for such a consideration. In such case the lien attaches to all the property of the transferee except such thereof as may be sold to a bona fide purchaser for such a consideration.

(5) If a certificate releasing such lien is issued. (See article 89.)

ART. 89. Release of lien.—The statute provides that if the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may issue his certificate releasing any or all property of the estate from the lien. The issuance of certificates releasing such lien is a matter resting within the discretion of the Commissioner, and certificates will be issued only in case there is actual need therefor. The primary purpose of such release is not to evidence payment or satisfaction of the tax, but to permit the transfer of property free from the lien in case it is necessary to clear title. Receipts for payment of the tax are issued by the collector.

If the tax liability has been fully discharged a certificate may be issued releasing the lien as to any or all property of the estate. If the tax liability has not been fully discharged, no general release of all property of the estate will be granted but certificates releasing the lien upon particular items of property may be issued by the Commissioner who may require as a prerequisite, in such an amount as he may designate, a partial payment of tax or the furnishing of an indemnity bond with such surety or sureties as he deems necessary. In lieu of such surety or sureties, the bond may be secured by the deposit of bonds or notes of the United States, any public debt obligations of the United States, or any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, equal in their total par value to the amount of such bond. (See section 1126 of the Revenue Act of 1926, as amended by section 7 of the Act of February 4, 1935, U. S. C., 1934 edition, Sup. II, Title 6, section 15.) The tax will be considered fully discharged only when investigation has been completed and payment of the tax, including any deficiency finally determined, has been made.

The application for a release should be filed with the Commissioner and should explain the circumstances that require the release, fully describe the particular items for which the release is desired, and show the applicant's relationship to the estate, such as executor, heir, devisee, legatee, beneficiary, transferee, or purchaser. If the return, Form 706, has not been filed, an affidavit may be required showing the value of the property to be released, the basis for such valuation, the approximate value of the gross estate, the approximate value of the total real property included in the gross estate, and in case the property is to be sold or transferred, the name and address of the purchaser or transferee and the consideration to be received.

PENALTIES

SEC. 320. (a) Whoever knowingly makes any false statement in any notice or return required to be filed under this title shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both.

(b) Whoever fails to comply with any duty imposed upon him by section 304, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Commissioner or any collector or law officer of the United States or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this title, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

SEC. 1114. (a) Any person required under this Act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this Act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * * * *

(e) Any person in possession of property, or rights to property subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to

the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

(f) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

SEC. 3176. Revised Statutes (as amended by section 1103 of the Revenue Act of 1926 [U. S. C., 1934 edition, Title 26, section 1512 (d) and (e)]). * * * In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

SEC. 406. Revenue Act of 1935.

In the case of a failure to make and file an internal-revenue tax return required by law, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, if the last date so prescribed for filing the return is after the date of the enactment of this Act, if a 25 per centum addition to the tax is prescribed by existing law, then there shall be added to the tax, in lieu of such 25 per centum: 5 per centum if the failure is for not more than 30 days, with an additional 5 per centum for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per centum in the aggregate.

SEC. 616. Revenue Act of 1928.

Any person who, in connection with any compromise under section 3229 of the Revised Statutes, as amended, or offer of such compromise, or in connection with any closing agreement under section 606 of this Act, or offer to enter into any such agreement, willfully (1) conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or (2) receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax, shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

SEC. 403. Revenue Act of 1932.

Except as provided in section 402, the tax imposed by section 401 of this Act shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by section 301(a) of the Revenue Act of 1926, * * *.

ART. 90. Nature of penalties.—Two kinds of penalties are provided for delinquency with respect to the duties imposed by the statute:

(1) A specific penalty, to be recovered by suit, unless previously paid or adjusted by the acceptance of an offer in compromise; and

(2) A penalty of a certain percentage of the tax, to be added to and collected in the same manner as the tax.

In any case in which more than one penalty is provided the Government may assert any one or more thereof.

ART. 91. Penalties for false or fraudulent notice or return.—In the case any statement in the notice or return is knowingly false, the person making it is subject to a penalty not exceeding \$5,000, or imprisonment for not exceeding one year, or both, and for a false or fraudulent return, 50 per cent will be added to the amount of the tax. Any person required to file any notice or make a return who willfully fails to do so at the time required shall be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

Any person who willfully aids or assists in the preparation or presentation of a false or fraudulent notice or return, or procures, counsels, or advises the preparation or presentation of such a notice or return, whether such falsity or fraud is with or without the knowledge or consent of the person required to make the notice or return, will be guilty of a felony and, upon conviction thereof, fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

ART. 92. Penalty for failure to give notice or make and file return.—For failure to give the notice or make and file the return within the time prescribed, the person in default is subject to a penalty not exceeding \$500.

For failure to make and file the return within the time prescribed by the Commissioner, or within an extension of time granted by the Commissioner or the collector, 5 per cent will be added to the tax if the failure is for not more than 30 days, with an additional 5 per cent for each 30 days or fraction thereof during which failure continues, not to exceed 25 per cent in the aggregate, except that if the last date allowed for filing the return is on or before August 30, 1935, 25 per cent will be added to the tax, and except that if the return is filed after the time allowed and it is shown that the failure to file within the time so allowed was due to a reasonable cause and not to willful neglect, no such addition will be made to the tax.

ART. 93. Penalty for failure to pay tax, exhibit property, keep or exhibit records, etc., and for concealment of assets.—Any person in possession or control of any record, file, or paper, containing or supposed to contain information relating to the estate, or having in his posses-

sion or control property comprised in the gross estate of the decedent, who fails to exhibit the same upon the request of the Commissioner or any collector or law officer of the United States, or his duly authorized deputy or agent, in the performance of his duties, or having knowledge or information of any fact or facts of a material bearing upon the liability, or the extent of liability, of the estate to the tax, who fails to make disclosure thereof upon request of the Commissioner or any revenue agent or inspector designated by him for that purpose, is liable to a penalty not to exceed \$500, to be recovered by civil action. Such a request must be granted whether or not he believes that a compliance therewith is material.

Any person required to pay the tax, keep any records, or supply any information, for the purpose of the computation, assessment, or collection of the tax, who willfully fails to pay such tax, keep such records, or supply such information, as required by the law or regulations, shall, in addition to other penalties, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

Any person who willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

Any person who in connection with any compromise entered into or offer made under the provisions of section 3229 of the Revised Statutes as amended, or, who in connection with any closing agreement under section 606 of the Revenue Act of 1928, or the offer to enter into any such agreement, willfully conceals from any officer or employee of the United States any property belonging to the estate or any person liable in respect of the tax, or receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement, relating to the estate or its value or the financial condition of any person liable in respect of the tax, shall, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both.

ART. 94. Penalty for assisting, procuring, or advising the preparation or presentation of false or fraudulent documents.—Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent affidavit, claim, or document, shall, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such affidavit, claim, or document, be guilty of a felony, and, upon conviction thereof, be fined not more than \$10,000,

or imprisoned for not more than five years, or both, together with the costs of prosecution.

ABATEMENT AND STAY OF COLLECTION OF JEOPARDY ASSESSMENT

SEC. 312. * * * (f) When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in subdivision (j) of this section.

(g) If the bond is given before the executor has filed his petition with the Board under subdivision (a) of section 308, the bond shall contain a further condition that if a petition is not filed within the period provided in such subdivision, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision.

(h) Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The executor shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the executor, be proportionately reduced. If the Board determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Board is rendered the bond shall, at the request of the executor, be proportionately reduced.

(i) When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector. * * *

(k) No claim in abatement shall be filed in respect of any assessment made after the enactment of this Act in respect of any estate
* * * tax.

ART. 95. Claim for abatement.—No claim for abatement may be filed in respect of any assessment made after the effective date of the

Revenue Act of 1926. The amount of any assessment directed to be abated by the statute as the result of a decision of the Board of Tax Appeals which has become final and all overassessments determined as a result of audit or examination of returns will be abated by the Commissioner without action on the part of the executor.

ART. 96. Collection of jeopardy assessment stayed by filing bond.—If a jeopardy assessment has been made, the executor, within 30 days after notice and demand from the collector for payment of the amount of the jeopardy assessment may obtain a stay of collection of the whole, or any part, of the amount of such assessment by filing with the collector a bond in such amount not exceeding double the amount as to which the stay is desired, and with such sureties as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated as a result of a decision of the Board which has become final, together with the interest thereon, as provided in the statute. (See article 85.) In lieu of such sureties, the bond may be secured by the deposit of bonds or notes of the United States, any public debt obligations of the United States, or any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, equal in their total par value to the amount of such bond. (See section 1126 of the Revenue Act of 1926, as amended by section 7 of the Act of February 4, 1935, U. S. C., 1934 edition, Sup. II, Title 6, section 15.) The petition with the Board of Tax Appeals for redetermination of the deficiency in respect to which the jeopardy assessment was made must be filed within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) after the mailing by the Commissioner of the notice of the final determination of the deficiency. (See article 76.) If the bond is given before the petition is filed with the Board, the bond shall contain a further condition that if a petition is not filed within the 90 days, then the amount, the collection of which is stayed by the bond, shall be paid on notice and demand at any time after the expiration of such 90-day period, together with interest thereon at the rate of 6 per cent per annum from the date of the jeopardy notice and demand made by the collector to the date of notice and demand made after the expiration of the 90-day period.

ART. 97. Accrual of interest as affected by the stay of the collection of a jeopardy assessment.—For rules relating to the accrual of interest where the collection of a jeopardy assessment is stayed by the filing of a bond, see article 85.

ART. 98. Limitation of time to file bond to stay collection of jeopardy assessment.—If it is desired to stay the collection of the whole, or any part, of the amount in respect to which a jeopardy assessment has

been made, the bond referred to in article 96 must be filed with the collector within 30 days after notice and demand by the collector for the payment of the amount of the jeopardy assessment.

REFUNDS

SEC. 319. (a) If the Commissioner has mailed to the executor a notice of deficiency under subdivision (a) of section 308 and if the executor after the enactment of this Act files a petition with the Board of Tax Appeals within the time prescribed in such subdivision, no refund in respect of the tax shall be allowed or made and no suit for the recovery of any part of such tax shall be instituted in any court, except—

(1) As provided in subdivision (c) of this section or in subdivision (i) of section 312 or in subdivision (b), (e), or (g) of section 318 or in subdivision (d) of section 1001; and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the Board which has become final; and

(3) As to any amount collected after the statutory period of limitations upon the beginning of distraint or a proceeding in court for collection has expired; but in any such claim for refund or in any such suit for refund the decision of the Board which has become final, as to whether such period had expired before the notice of deficiency was mailed, shall be conclusive.

(b) (as amended by section 810(a) of the Revenue Act of 1932) All claims for the refunding of the tax imposed by this title alleged to have been erroneously or illegally assessed or collected must be presented to the Commissioner within three years next after the payment of such tax. The amount of the refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the three years immediately preceding the allowance of the refund.

(c) (as amended by section 810(b) of the Revenue Act of 1932 and by section 504(d) of the Revenue Act of 1934) If the Board finds that there is no deficiency and further finds that the executor has made an overpayment of tax, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Board has become final, be credited or refunded to the executor as provided in section 3220 of the Revised Statutes, as amended. No such refund shall be made of any portion of the tax unless the Board determines as part of its decision that it was paid within four years (or in the case of a tax imposed by this title, within three years) before the filing of the claim or the filing of the petition, whichever is earlier.

SEC. 325. Any tax that has been paid under the provisions of Title III of the Revenue Act of 1924 prior to the enactment of this Act in excess of the tax imposed by such title as amended by this Act shall be refunded without interest.

SEC. 606. Revenue Act of 1928.

(a) **Authorization.**—The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commissioner) is authorized to enter into an agreement in writing with any person relating to the liability of such

person (or of the person or estate for whom he acts) in respect of any internal-revenue tax for any taxable period ending prior to the date of the agreement.

(b) **Finality of agreements.**—If such agreement is approved by the Secretary, or the Undersecretary, within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded. * * *

SEC. 607. Revenue Act of 1928.

Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid (whether before or after the enactment of this Act) after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim.

SEC. 608. Revenue Act of 1928.

A refund of any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) made after the enactment of this Act, shall be considered erroneous—

(a) if made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed; or

(b) in the case of a claim filed within the proper time and disallowed by the Commissioner after the enactment of this Act, if the refund was made after the expiration of the period of limitation for filing suit, unless—

(1) within such period suit was begun by the taxpayer, or

(2) (as amended by section 503 of the Revenue Act of 1934) within such period, the taxpayer and the Commissioner agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of final decision in one or more named cases then pending before the United States Board of Tax Appeals or the courts. If such agreement has been entered into, the running of such statute of limitations shall be suspended in accordance with the terms of the agreement.

SEC. 610. Revenue Act of 1928.

(a) Any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) refund of which is erroneously made, within the meaning of section 608, after the enactment of this Act, may be recovered by suit brought in the name of the United States, but only if such suit is begun within two years after the making of such refund.

(b) Any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) which has been erroneously refunded (if such refund would not be considered as erroneous under section 608) may be recovered by suit brought in the name of the United States, but only if such suit is begun before the

expiration of two years after the making of such refund or before May 1, 1928, whichever date is later.

(c) (as added by section 502(a) of the Revenue Act of 1934) Despite the provisions of subsections (a) and (b) such suit may be brought at any time within five years from the making of the refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact.

NOTE.—Section 502(b) of the Revenue Act of 1934 reads as follows:

“The amendment made by subsection (a) of this section shall not apply to any suit which was barred on the date of the enactment of this Act.”

(d) (as added by section 803 of the Revenue Act of 1936) Erroneous refunds recoverable by suit under this section shall bear interest at the rate of 6 per centum per annum from the date of the payment of the refund.

SEC. 611. Revenue Act of 1928.

If any internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) was, within the period of limitation properly applicable thereto, assessed prior to June 2, 1924, and if a claim in abatement was filed, with or without bond, and if the collection of any part thereof was stayed, then the payment of such part (made before or within one year after the enactment of this Act) shall not be considered as an overpayment under the provisions of section 607, relating to payments made after the expiration of the period of limitation on assessment and collection.

SEC. 403. Revenue Act of 1932.

Except as provided in section 402, the tax imposed by section 401 of this Act shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by section 301(a) of the Revenue Act of 1926, * * *.

SEC. 1104. Revenue Act of 1932.

Where the Commissioner has (before or after the enactment of this Act) signed a schedule of overassessments in respect of any internal revenue tax imposed by this Act or any prior revenue Act, the date on which he first signed such schedule (if after May 28, 1928) shall be considered as the date of allowance of refund or credit in respect of such tax.

SEC. 177. Judicial Code (as amended by section 808 of the Revenue Act of 1936 [U. S. C., 1934 edition, Title 28, Sup. II, section 284(b)]). In any judgment of any court rendered (whether against the United States, a collector or deputy collector of internal revenue, a former collector or deputy collector, or the personal representative in case of death) for any overpayment in respect of any internal-revenue tax, interest shall be allowed at the rate of 6 per centum per annum upon the amount of the overpayment, from the date of the payment or collection thereof to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue. The Commissioner is hereby authorized to tender by check payment of any such judgment, with interest as herein provided, at any time after such judgment becomes final, whether or not a claim for such payment has been duly filed, and such

tender shall stop the running of interest, whether or not such refund check is accepted by the judgment creditor.

SEC. 3220. Revised Statutes (as amended by section 3, Act of May 29, 1928, Public, No. 611, Seventieth Congress [U. S. C., 1934 edition, Title 26, section 1670 (a)(1) and (b), and section 1676]). The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal-revenue taxes collected by him, with the cost and expense of suit; also all damages and cost recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress, by internal-revenue districts and alphabetically arranged, of all refunds in excess of \$500, at the beginning of each regular session of Congress of all transactions under this section.

SEC. 3226. Revised Statutes (as amended by section 1103(a) of the Revenue Act of 1932 and by section 807(a) of the Revenue Act of 1936 [U. S. C., 1934 edition, Title 26, Sup. II, sections 1672-1673]). No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which such suit or proceeding relates. Any consideration, reconsideration, or action by the Commissioner with respect to such claim following the mailing of a notice by registered mail of disallowance shall not operate to extend the period within which suit may be begun.

SEC. 3228. Revised Statutes (as amended by section 619(c) of the Revenue Act of 1928 [U. S. C., 1934 edition, Title 26, section 1433]).

(a) All claims for the refunding or crediting of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes, be presented to the Commissioner of Internal Revenue within four years next after the payment of such tax, penalty, or sum.

(b) Except as provided in section 284 of the Revenue Act of 1926, claims for credit or refund (other than claims in respect of taxes

imposed by the Revenue Act of 1916, the Revenue Act of 1917, or the Revenue Act of 1918) which at the time of the enactment of the Revenue Act of 1921 were barred from allowance by the period of limitation then in existence, shall not be allowed.

SEC. 319. (b) (as originally enacted) All claims for the refunding of the tax imposed by this title alleged to have been erroneously or illegally assessed or collected must be presented to the Commissioner within three years next after the payment of such tax.

SEC. 319. (c) (as originally enacted) If the Board finds that there is no deficiency and further finds that the executor has made an overpayment of tax, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Board has become final, be credited or refunded to the executor as provided in section 3220 of the Revised Statutes, as amended. Such refund shall be made either (1) if claim therefor was filed within the period of limitation provided for by law, or (2) if the petition was filed with the Board within four years after the tax was paid, or, in the case of a tax imposed by this title, within three years after the tax was paid.

SEC. 810. Revenue Act of 1932.

(a) Section 319(b) of the Revenue Act of 1926 is amended to read as follows:

"(b) All claims for the refunding of the tax imposed by this title alleged to have been erroneously or illegally assessed or collected must be presented to the Commissioner within three years next after the payment of such tax. The amount of the refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the three years immediately preceding the allowance of the refund."

(b) The last sentence of section 319(c) of the Revenue Act of 1926 is amended to read as follows:

"No such refund shall be made of any portion of the tax paid more than four years (or, in the case of a tax imposed by this title, more than three years) before the filing of the claim or the filing of the petition, whichever is earlier."

(c) Title III of the Revenue Act of 1924 is amended by inserting after section 318 a new section to read as follows:

"SEC. 318½. The amount of any refund of the tax imposed by Part I of this title shall not exceed the portion of the tax paid during the four years immediately preceding the filing of the claim, or if no claim was filed, then during the four years immediately preceding the allowance of the refund."

(d) Section 319(b) of the Revenue Act of 1926, as amended by this Act, and section 318½ of the Revenue Act of 1924, as added by this Act, shall not bar from allowance a claim for refund filed prior to the enactment of this Act which but for such enactment would have been allowable.

SEC. 1103. Revenue Act of 1932.

(a) Section 3226 of the Revised Statutes, as amended, is amended to read as follows:

"SEC. 3226. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been

erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which such suit or proceeding relates."

(b) Suits or proceedings instituted before the date of the enactment of this Act shall not be affected by the amendment made by subsection (a) of this section to section 3226 of the Revised Statutes. In the case of suits or proceedings instituted on or after the date of the enactment of this Act where the part of the claim to which such suit or proceeding relates was disallowed before the date of the enactment of this Act, the statute of limitations shall be the same as provided by such section 3226 before its amendment by subsection (a) of this section.

SEC. 504. Revenue Act of 1934. * * *

(d) The last sentence of section 319(c) of the Revenue Act of 1926, as amended, is amended to read as follows: "No such refund shall be made of any portion of the tax unless the Board determines as part of its decision that it was paid within four years (or in the case of a tax imposed by this title, within three years) before the filing of the claim or the filing of the petition, whichever is earlier."

(e) The amendments made by subsections (a), (b), (c), and (d) of this section shall have no effect in the case of any proceeding before the Board on a petition if any hearing by the Board thereon has been held prior to 30 days after the date of the enactment of this Act.

SEC. 807. Revenue Act of 1936.

(a) Section 3226 of the Revised Statutes, as amended, is amended by adding at the end thereof the following new sentence: "Any consideration, reconsideration, or action by the Commissioner with respect to such claim following the mailing of a notice by registered mail of disallowance shall not operate to extend the period within which suit may be begun."

(b) The amendment made by subsection (a) shall not operate (1) to bar a suit or proceeding in respect of a claim reopened prior to the date of the enactment of this Act, if such suit or proceeding was not barred under the law in effect prior to the date of the enactment of this Act, or (2) to prevent the suspension of the statute of limitations for filing suit under section 608(b)(2), as amended, of the Revenue Act of 1928.

ART. 99. Claim for refund.—A claim for refund of estate tax, or for refund of interest or penalties, erroneously or illegally collected, should be made on the form prescribed by the Treasury Department (Form 843), and should be filed with the collector of internal revenue,

although a claim will not be considered defective solely by reason of the fact that it is not made on the form or that it is filed with the Commissioner of Internal Revenue. The claim must set forth in detail and under oath each ground upon which a refund is claimed, and facts sufficient to apprise the Commissioner of the exact basis thereof. Any claim which does not comply with the requirements of the preceding sentence will not be considered for any purpose as a claim for refund.

Claims for the refund of estate tax imposed by the Revenue Act of 1926 and the additional estate tax imposed by the Revenue Act of 1932, or the Revenue Act of 1932 as amended by the Revenue Act of 1934, or 1935, must be filed within three years next after the payment of the amount sought to be refunded. If, however, the tax was imposed by the estate tax title of any of the Acts prior to the Revenue Act of 1926 the period within which the claim must be filed is four years after payment of the tax. Any tax imposed by Title III of the Revenue Act of 1924 which was paid prior to the enactment of the Revenue Act of 1926 in excess of the amount of tax imposed by the Revenue Act of 1924 as amended by the Revenue Act of 1926 is not deemed to have been erroneously or illegally collected and hence a claim for the refund of such excess is not subject to the 4-year limitation set out in the next preceding sentence. Furthermore, the 4-year limitation of time within which claims for refund must be filed does not apply in a case in which a refund is sought under the provisions of the last paragraphs of sections 401 and 403 of the Revenue Act of 1921.

The amount of the refund shall not exceed the portion of the tax paid during the three or four year period, as the case may be, immediately preceding the filing of the claim, or the filing of the petition with the Board of Tax Appeals. Upon receipt of any claim for refund, other than a claim for refund of an overpayment determined in accordance with a decision of the Board of Tax Appeals which has become final, the return of the estate will be reaudited and only the excess payment determined by the Commissioner as a result of consideration of the claim and reaudit will be refunded. If the reaudit reveals that the tax has been underpaid, the amount of such underpayment will be collected unless the collection thereof is barred.

If a petition was filed with the Board of Tax Appeals for the redetermination of a deficiency, as provided by section 308, and the Board finds that the executor has made an overpayment of the tax, and further determines as part of its decision that any portion of the overpayment was made within three years (or, within four years, in a case of a tax imposed by an Act prior to the Reve-

nue Act of 1926) before the filing of the claim or the filing of the petition, whichever is earlier, the amount of such portion of the overpayment will be refunded. The portion of the overpayment made within such period will be refunded, even though the Board has not determined as part of its decision that the overpayment was so made, if a hearing upon the petition was held by the Board prior to the expiration of 30 days after the date of the enactment of the Revenue Act of 1934.

Save in the case of a claim for refund of an overpayment computed in accordance with a decision of the Board of Tax Appeals which has become final, the burden of proof rests upon the claimant and all facts relied upon in support of the claim must be clearly set forth under oath. Every affidavit, argument, brief, or statement of facts, prepared or filed by an attorney or agent as argument or evidence in the matter of a protest, must have therein a statement signed by such attorney or agent showing whether or not he prepared such document and whether or not the attorney or agent knows of his own knowledge that the facts contained therein are true. In the case there is a hearing, should the executor not appear in person, his representative who appears must present a properly executed power of attorney and be enrolled to practice before the Treasury Department. (See article 74.)

(1) If the claim is made by an executor or administrator, a certificate of the court must be furnished showing that the appointment remains in full force and effect.

(2) If the executor or administrator has been discharged and no administrator de bonis non has been appointed and qualified, there should be submitted, in lieu of the certificate above mentioned, (a) a certified copy of the court order granting the discharge, and (b) a certified copy of the order of distribution, or, if such order does not fully disclose the identity of the person or persons entitled to receive any amount that may be refunded and the percentage or proportion thereof to which each, if more than one, is entitled, there should be submitted a certified copy of the decedent's will, if any, and such further proof as may be requisite to establish both the identity of such person or persons and the percentage or proportion of the amount sought to be refunded to which each, in the case there are more than one, is entitled.

If upon audit of the return filed by the executor the Commissioner determines that an overassessment has been made on account of the tax, a certificate of overassessment will be prepared and issued, even though claim for refund of such excess payment has not been filed, except as provided in article 76. The certificate of overassessment, issued if no claim for refund has been filed, will be addressed

to the executor and the documentary evidence, as set out above, identifying the person or persons entitled to receive the refund will be required.

A refund is erroneous if made after the enactment of the Revenue Act of 1928, when made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed. In the case a claim was filed within the proper time and such claim was disallowed by the Commissioner after the enactment of the Revenue Act of 1928, and the period of limitation for filing suit by the executor had expired prior to the making of the refund, a refund based upon such claim is erroneous unless suit was begun by the executor within the period of limitation for filing suit, or unless within such period the executor and the Commissioner agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of final decision of one or more named cases then pending before the Board of Tax Appeals or the courts. Erroneous refunds, as above described, may be recovered by suit brought in the name of the United States within two years after the making of such refunds. An erroneous refund, though not considered as erroneous under section 608 of the Revenue Act of 1928, may be recovered in the same manner if the suit is begun within two years after the making of such refund or before May 1, 1928, whichever date is later. Erroneous refunds, whether erroneous under the provisions of section 608 of the Revenue Act of 1928 or otherwise, may be recovered by suit brought within five years of the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact and suit for recovery was not barred on the date of the enactment of the Revenue Act of 1934.

A claim for the payment of a judgment rendered against a collector of internal revenue representing Federal estate tax, penalties, or other sums collected in connection therewith should be made on Form 843 and filed with the Commissioner of Internal Revenue, Washington, D. C. The claimant should state the names of all parties to the action, the date of its commencement, the date of the judgment, the court in which it was recovered, its amount, and the fact that the action related to Federal estate tax or interest or penalties in connection therewith. To the claim there should be annexed two certified copies of the final judgment, a certificate of probable cause (see section 989 of the Revised Statutes [U. S. C., 1934 edition, Title 28, section 842]) and, if refund is claimed, an itemized bill of the costs paid, receipted by the clerk or other proper officer of the court.

A claim for the payment of a judgment rendered against the United States representing Federal estate tax, penalties, or other

sums collected in connection therewith should be made on Form 843 in the manner prescribed in the preceding paragraph, except that—

- (a) a certificate of probable cause is not required,
- (b) the claims shall be executed in duplicate, and
- (c) in the case of a judgment rendered by the Court of Claims there may be submitted, in place of a certified copy of the final judgment, a certificate of the judgment issued by the clerk of the court and two copies of the court's opinion, if any was rendered.

INTEREST ON REFUNDS

SEC. 301. (c) (as amended by section 802(a) of the Revenue Act of 1932) * * * Refund based on the credit may (despite the provisions of section 319) be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest, except that where the overpayment was made prior to the enactment of the Revenue Act of 1932, then interest shall be allowed and paid on the amount refunded at the rate of 6 per centum per annum from the date of the overpayment to the date of such enactment.

SEC. 614. Revenue Act of 1928.

(a) Interest shall be allowed and paid upon any overpayment in respect of any internal-revenue tax, at the rate of 6 per centum per annum, as follows: * * *

(2) (as amended by section 804 of the Revenue Act of 1936) In the case of a refund, from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days, such date to be determined by the Commissioner, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon. * * *

(d) Subsections (a), (b), and (c) shall take effect on the expiration of 30 days after the enactment of this Act, and shall be applicable to any credit taken or refund paid after the expiration of such period, even though allowed prior thereto.

ART. 100. Payment of claims and interest.—Under the law, warrants in payment of claims allowed can only be drawn payable to the person or persons entitled to the proceeds, and consequently can not be drawn payable to attorneys or agents. If the claimants are indebted to the United States for taxes, such taxes must be paid before the warrants are delivered. (U. S. C., 1934 edition, Title 31, section 227.)

Upon the allowance of the claim for refund of any tax or penalty paid, unless the refund results from the allowance of a credit for payment of estate, inheritance, legacy, or succession taxes, the statute provides for the payment of interest upon the total amount of such refund at the rate of 6 per cent per annum from the date such tax or penalty was paid to a date preceding the date of the refund check by not more than 30 days, such date to be determined

by the Commissioner, whether or not such check is accepted by the taxpayer. Acceptance of a refund warrant or check will not prejudice the right of the claimant to have refunded to him any additional overpayment and interest thereon. If a refund is based upon the credit for payment of estate, inheritance, legacy, or succession taxes allowed by subdivision (b) of section 301, as amended by section 802 of the Revenue Act of 1932 (see article 9), the refund will be made without interest unless the overpayment was made prior to the enactment of the Revenue Act of 1932, in which case interest will be paid upon the amount of such overpayment at the rate of 6 per cent per annum from the date of payment to the date of the enactment of such Act.

POWER TO COMPROMISE OR REMIT PENALTIES

SEC. 3229. Revised Statutes [U. S. C., 1934 edition, Title 26, section 1661]. The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws instead of commencing suit thereon; and, with the advice and consent of the said Secretary and the recommendation of the Attorney General, he may compromise any such case after a suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of the Commissioner the opinion of the Solicitor of Internal Revenue, or of the officer acting as such, with his reason therefor, with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise.

ART. 101. **Compromise of taxes and penalties.**—Offers in compromise should be filed with the appropriate collector of internal revenue. No offer in compromise of tax, interest, and ad valorem penalty collectible as part of the tax will be accepted unless there is a substantial doubt as to either liability or collectibility.

PERSONAL LIABILITY OF EXECUTOR, TRANSFEREE, TRUSTEE, AND BENEFICIARY

SEC. 3467. Revised Statutes (as amended by section 518(a) of the Revenue Act of 1934 [U. S. C., 1934 edition, Title 31, section 192]). Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

SEC. 315. (b) (as amended by section 803(c) of the Revenue Act of 1932) If (1) except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his

death, or makes a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession or enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom, or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax.

ART. 102. Personal liability.—If the executor, before paying all the estate tax, pays, in whole or in part, any debt due by the decedent or the decedent's estate, or distributes any portion of the estate, he is personally liable, to the extent of such payment or distribution, for so much of the estate tax as remains due and unpaid.

The term "executor" includes every person in actual or constructive possession of any property of the decedent if there is no appointed, qualified, and acting personal representative within the United States. For provisions of the statute and regulations prescribing conditions authorizing release of the executor from his personal liability for payment of the tax, see section 313(b) and article 67.

If the tax in respect to a transfer of property includible in the gross estate under the provisions of section 302(c), or such section 302(c) as amended, or in respect to insurance receivable by a beneficiary other than the estate and includible in the gross estate under the provisions of section 302(g), is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax.

EXAMINATION OF RECORDS AND TAKING OF TESTIMONY

SEC. 1104 (as amended by section 618, Revenue Act of 1928). The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such persons, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

SEC. 1122. (a) If any person is summoned under this Act to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides

shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(b) The district courts of the United States at the instance of the United States are hereby invested with such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the provisions of this Act. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such provisions.

SEC. 507. Revenue Act of 1934.

The Commissioner, for the purpose of determining the liability at law or in equity of a transferee of the property of any person with respect to any Federal taxes imposed upon such person, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon such liability, and may require the attendance of the transferor or transferee, or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter, with power to administer oaths to such person or persons.

ART. 103. Securing evidence—Taking testimony.—In order to ascertain the correctness of a return, or to make a return if none has been made, the Commissioner has power to require the attendance, and to take the testimony, of the person rendering the return, or any officer or employee of such person, or any other person having knowledge in the premises. Such persons may be required to produce any relevant book, paper, or other record. The Commissioner also is authorized, for the purpose of determining the liability at law or in equity of a transferee of the property of any person with respect to any Federal taxes imposed upon such person, to examine any books, papers, records, or memoranda bearing upon such liability and may require the attendance of the transferor or transferee, or any officer or employee of such person and take his testimony with reference to the matter. The Commissioner has the authority to administer oaths to the persons required to testify. The power and authority herein described may be exercised by any officer or employee of the Bureau of Internal Revenue, including the field force designated by the Commissioner for that purpose. (For penalties, see article 93.)

ART. 104. Power to compel compliance.—If any person is summoned to appear and testify, or to produce books, papers, or other data, the District Court of the United States for the district in which such person resides has power to compel the giving of the testimony, the production of the books, papers, or data, and to issue any appropriate process, writ, or order.

REMEDIES FOR COLLECTION AND PROCEEDINGS FOR ENFORCING LIABILITY OF A TRANSFEREE OR FIDUCIARY

SEC. 305. (b) (as amended by section 808(a) of the Revenue Act of 1932) Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part * * *. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of extension, and the running of the statute of limitations for assessment and collection, as provided in sections 310(a) and 311(b), shall be suspended for the period of any such extension. * * *

SEC. 308. (i) (as amended by section 808(b) of the Revenue Act of 1932) Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner, with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax), may grant an extension for the payment of such deficiency * * *. In such case the running of the statute of limitations for assessment and collection as provided in sections 310(a) and 311(b), shall be suspended for the period of any such extension * * *.

SEC. 311. * * * (b) Where the assessment of any tax imposed by this title or of any estate or gift tax imposed by prior Act of Congress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the executor. * * *

SEC. 316. (a) The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this title (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) The liability, at law or in equity, of a transferee of property of a decedent or donor, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed by this title or by any prior estate tax Act or by any gift tax Act.

(2) The liability of a fiduciary under section 3467 of the Revised Statutes in respect of the payment of any such tax from the estate of the decedent or donor.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the executor or donor; or

(2) If the period of limitation for assessment against the executor expired before the enactment of this Act but assessment against the executor was made within such period,—then, within six years after the making of such assessment against the executor, but in no case later than one year after the enactment of this Act.

(3) If a court proceeding against the executor or donor for the collection of the tax has been begun within either of the above periods,—then within one year after return of execution in such proceeding.

(c) (as amended by section 403(a) of the Revenue Act of 1928) The running of the statute of limitations upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under subdivision (a) of section 308 to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

(d) This section shall not apply to any suit or other proceeding for the enforcement of the liability of a transferee or fiduciary pending at the time of the enactment of this Act.

(e) As used in this section the term "transferee" includes heir, legatee, devisee, and distributee.

SEC. 604. Revenue Act of 1928.

No suit shall be maintained in any court for the purpose of restraining the assessment or collection of (1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any income, war-profits, excess-profits, or estate-tax, or (2) the amount of the liability of a fiduciary under section 3467 of the Revised Statutes in respect of any such tax.

SEC. 403. Revenue Act of 1932.

Except as provided in section 402, the tax imposed by section 401 of this Act shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by section 301(a) of the Revenue Act of 1926, * * *.

SEC. 316. (c) (as originally enacted) The running of the period of limitation upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under subdivision (a) of section 308 to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary, and for 60 days thereafter.

NOTE.—The above subdivision was amended by section 403(a) of the Revenue Act of 1928. Section 403(b) of the Revenue Act of 1928 reads as follows:

"Subsection (a) of this section shall apply in all cases where the period of limitation has not expired prior to the enactment of this Act."

ART. 105. Remedies for collection and administrative proceedings for enforcing liability of a transferee or fiduciary.—*Remedies for collection.*—Three remedies are provided for the collection of the tax: (1) The collector may issue warrant of distraint authorizing the seizure and sale of any or all of the assets of the estate. (See section 3187 of the Revised Statutes, as amended by section 1016 of the Revenue Act of 1924; U. S. C., 1934 edition, Title 26, section 1580.) (2) The collector may commence in any court of the United States appropriate proceedings, in the name of the United States, to subject the property of the decedent to sale under the judgment or decree of the court. (3) The personal liability of the executor and of certain transferees, trustees, and beneficiaries, set forth in article 102, may be enforced by any appropriate action.

The period of limitation, except in case of fraud or in case no return was filed, for collection of the tax by distraint or suit is six years after assessment if assessment of the tax was made within the statutory period of limitation or prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the executor. If an extension of time for payment of the tax is granted under the provisions of section 305(b) or section 308(i), as amended, the period within which collection by distraint or suit may be made is extended by the period of the extension granted for payment of the tax.

Administrative proceedings for enforcing liability of a transferee or fiduciary.—The amount for which a transferee of the property of a decedent is liable, at law or in equity, and the amount of the personal liability of a fiduciary under section 3467 of the Revised Statutes, as amended, in respect of any estate tax, whether shown on the return of the executor or determined as a deficiency in the tax, shall be assessed against such transferee or such fiduciary, as the case may be, and collected and paid, in the same manner and subject to the same provisions and limitations as in the case of a deficiency, except as hereinafter provided.

The term "transferee" as used in section 316 includes an heir, legatee, devisee, and distributee of an estate of a deceased person.

The period of limitation for assessment of the liability of a transferee or of a fiduciary is as follows:

(a) Within one year after the expiration of the period of limitation for assessment against the executor. (See sections 308, 310, 311, 312, 318, and 1109, and article 77.)

(b) If the period of limitation for assessment against the executor expired before the enactment of the Revenue Act of 1926 but assessment against the executor was made within such period, then within six years after the making of such assessment against the executor,

but in no case later than one year after the enactment of the Revenue Act of 1926.

(c) If a court proceeding against the executor for the collection of the tax has been begun within the period of limitation for the bringing of such proceeding, then within one year after the return of execution in such proceeding.

If a notice of the liability of a transferee, or the liability of a fiduciary, has been mailed to such transferee or to such fiduciary under the provisions of section 308(a) (see article 76), then the running of the statute of limitations shall be suspended for the period in which the Commissioner is prohibited from making the assessment (and in any event, if a proceeding in respect of the liability is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

The provisions of section 316 do not apply in any suit or proceeding for the enforcement of the liability of a transferee, or a fiduciary, which was pending at the time of the enactment of the Revenue Act of 1926.

If assessments have been made against several persons covering the same tax liability, and payment of such liability by one or more such persons has been duly certified to the Commissioner, the Commissioner, for the purpose of temporarily relieving the collector from liability under section 3218 of the Revised Statutes (U. S. C., 1934 edition, Title 26, section 1740), may authorize him to take credit temporarily with respect to the assessments not specifically paid. Such action, however, shall not constitute an abatement and shall not discharge the liability of the persons concerned.

RECORDS, STATEMENTS, AND SPECIAL RETURNS

SEC. 1102. (a) Every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as the Commissioner deems sufficient to show whether or not such person is liable to tax.

* * * * *

(d) Any oath or affirmation required by the provisions of this Act or regulations made under authority thereof may be administered by any officer authorized to administer oaths for general purposes by the law of the United States or of any State, Territory, or possession of the United States, wherein such oath or affirmation is administered, or by any consular officer of the United States.

ART. 106. Executor's duty to keep records.—It is the duty of the executor to keep such records as the Commissioner may require. Executors are required to keep such complete and detailed records of the affairs of the estate as will enable the Commissioner to determine accurately the amount of the tax liability.

ART. 107. Executor's duty to render statements.—It is the duty of the executor not only to make the formal return, but also to render any other sworn statement which the Commissioner may require for the purpose of determining whether a tax liability exists and, if so, the extent thereof.

ESTATES ADMINISTERED IN THE UNITED STATES COURT FOR CHINA

SEC. 321. (a) The term "resident" as used in this title includes a citizen of the United States with respect to whose property any probate or administration proceedings are had in the United States Court for China. Where no part of the gross estate of such decedent is situated in the United States at the time of his death, the total amount of tax due under this title shall be paid to or collected by the clerk of such court, but where any part of the gross estate of such decedent is situated in the United States at the time of his death, the tax due under this title shall be paid to or collected by the collector of the district in which is situated the part of the gross estate in the United States, or, if such part is situated in more than one district, then the collector of such district as may be designated by the Commissioner.

(b) For the purpose of this section the clerk of the United States Court for China shall be a collector for the territorial jurisdiction of such court, and taxes shall be collected by and paid to him in the same manner and subject to the same provisions of law, including penalties, as the taxes collected by and paid to a collector in the United States.

NOTICE OF PERSONS ACTING AS FIDUCIARY

SEC. 317. (a) Upon notice to the Commissioner that any person is acting as executor, such person shall assume the powers, rights, duties, and privileges of an executor in respect of a tax imposed by this title or by any prior estate tax Act, until notice is given that such person is no longer acting as executor.

(b) Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 316, the fiduciary shall assume on behalf of such person the powers, rights, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person), until notice is given that the fiduciary capacity has terminated.

(c) Notice under subdivision (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

(d) In the absence of any notice to the Commissioner under subdivision (a) or (b), notice under this title of a deficiency or other

liability, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for the purposes of this title.

ART. 108. Notice of persons acting as fiduciary.—The “notice to the Commissioner” provided for in section 317 shall be in writing signed by the fiduciary and filed with the Commissioner, setting forth the name and address of the person for whom he is acting in a fiduciary capacity and also the nature of the liability of such person, accompanied by satisfactory evidence of his authority to act for such person in the fiduciary capacity. If the fiduciary capacity exists by order of court, a certified copy of the order of the court may be regarded as such satisfactory evidence. The written notice to the commissioner need not be accompanied by evidence of the authority of the fiduciary to act if there is already on file with the Commissioner satisfactory evidence of the authority to act. Any such written notice which has been filed with the Commissioner since the enactment of the Revenue Act of 1926 shall be considered as sufficient notice to the Commissioner within the meaning of section 317 if and when there is or has been filed with the Commissioner the satisfactory evidence herein provided for. When the fiduciary capacity has terminated, the fiduciary, in order to be relieved of any further duty or liability as such, must file with the Commissioner written notice that the fiduciary capacity has terminated as to him, accompanied by satisfactory evidence of the termination of the fiduciary capacity. Such written notice should state the name and address of the person, if any, who has been substituted as fiduciary.

This article, made under the provisions of section 317, shall not be taken to abridge in any way the powers and duties of fiduciaries provided for in other sections of Title III of the Act or in any prior estate tax Act.

SCOPE OF REPEAL

SEC. 1200. (a) The following parts of the Revenue Act of 1924 are repealed, to take effect (except as otherwise provided in this Act) upon the enactment of this Act, subject to the limitations provided in subdivisions (b) :

*	*	*	*	*	*	*
Part I of Title III (called “Estate Tax”) ;						
*	*	*	*	*	*	*

Sections 1004, 1005, 1006, and 1007, subdivision (a) of section 1008, sections 1009, 1010, 1011, 1012, 1014, 1018, 1019, and 1020, subdivisions (a) and (b) of section 1021, subdivision (c) of section 1025, and sections 1026, 1027, 1028, 1029, 1030, and 1031 (being certain administrative provisions).

(b) The parts of the Revenue Act of 1924 which are repealed by this Act shall (except as provided in sections 283 and 318 and except as otherwise specifically provided in this Act), remain in force for the assessment and collection of all taxes imposed by such Act, and for the assessment, imposition, and collection of all interest, penalties, or forfeitures which have accrued or may accrue in relation to any such taxes * * *. In the case of any tax imposed by any part of the Revenue Act of 1924 repealed by this Act, if there is a tax imposed by this Act in lieu thereof, the provisions imposing such tax shall remain in force until the corresponding tax under this Act takes effect under the provisions of this Act.

SEC. 714. Revenue Act of 1928.

The parts of the Revenue Act of 1926 which are repealed by this Act shall remain in force for the assessment and collection of all taxes imposed thereby and for the assessment, imposition, and collection of all interest, penalties, or forfeitures which have accrued or may accrue in relation to any such taxes.

ART. 109. Scope of repeal.—The Revenue Act of 1926 retains in force (except as provided in section 318) the provisions of Part I, Title III, of the Revenue Act of 1924, and the provisions of estate tax titles of all prior Acts, for the assessment and collection of all taxes accruing thereunder and for the imposition and collection of all penalties which have accrued or may accrue in relation to any such taxes. The Revenue Act of 1928 to the same extent, and for the same purpose, retains in force the parts of the Revenue Act of 1926 repealed by the Revenue Act of 1928.

RULES AND REGULATIONS

SEC. 1101. The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this Act.

SEC. 1108. (a) (as amended by section 506 of the Revenue Act of 1934) The Secretary, or the Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the internal revenue laws, shall be applied without retroactive effect.

SEC. 403. Revenue Act of 1932. (Pertaining to additional estate tax.) * * * the tax imposed by section 401 of this Act shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by section 301(a) of the Revenue Act of 1926, * * *.

ART. 110. Promulgation of regulations.—These regulations are prescribed pursuant to the authority contained in the foregoing statutory provisions, and apply to all pending estate tax cases unless a particular question is governed by a specific provision of the earlier statutes differing from the Revenue Act of 1926, as amended and

supplemented to date, in which case the provisions of the applicable statute control, and Regulations 37 (revised January, 1921), Regulations 63, Regulations 68, and Regulations 70 (1929 Edition), as amended by Treasury Decisions relating thereto, to that extent remain in full force and effect.

CHAS. T. RUSSELL,
Acting Commissioner of Internal Revenue.

Approved October 26, 1937.

ROSWELL MAGILL,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 28, 1937, 9:35 a. m.)

APPENDIX

TITLE III, REVENUE ACT OF 1926, AS AMENDED

ESTATE TAX

(With references to pages showing provisions as originally enacted and describing the amendments)

SEC. 300. When used in this title—

(a) The term "executor" means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent:

(b) The term "net estate" means the net estate as determined under the provisions of section 303;

(c) The term "month" means calendar month; and

(d) The term "collector" means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner.

SEC. 301. (a) In lieu of the tax imposed by Title III of the Revenue Act of 1924, a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 303) is hereby imposed upon the transfer of the net estate of every decedent dying after the enactment of this act, whether a resident or nonresident of the United States;

1 per centum of the amount of the net estate not in excess of \$50,000;

2 per centum of the amount by which the net estate exceeds \$50,000 and does not exceed \$100,000;

3 per centum of the amount by which the net estate exceeds \$100,000 and does not exceed \$200,000;

4 per centum of the amount by which the net estate exceeds \$200,000 and does not exceed \$400,000;

5 per centum of the amount by which the net estate exceeds \$400,000 and does not exceed \$600,000;

6 per centum of the amount by which the net estate exceeds \$600,000 and does not exceed \$800,000;

7 per centum of the amount by which the net estate exceeds \$800,000, and does not exceed \$1,000,000;

8 per centum of the amount by which the net estate exceeds \$1,000,000 and does not exceed \$1,500,000;

9 per centum of the amount by which the net estate exceeds \$1,500,000 and does not exceed \$2,000,000;

10 per centum of the amount by which the net estate exceeds \$2,000,000 and does not exceed \$2,500,000;

11 per centum of the amount by which the net estate exceeds \$2,500,000 and does not exceed \$3,000,000;

12 per centum of the amount by which the net estate exceeds \$3,000,000 and does not exceed \$3,500,000;

13 per centum of the amount by which the net estate exceeds \$3,500,000 and does not exceed \$4,000,000;

14 per centum of the amount by which the net estate exceeds \$4,000,000 and does not exceed \$5,000,000;

15 per centum of the amount by which the net estate exceeds \$5,000,000 and does not exceed \$6,000,000;

16 per centum of the amount by which the net estate exceeds \$6,000,000 and does not exceed \$7,000,000;

17 per centum of the amount by which the net estate exceeds \$7,000,000 and does not exceed \$8,000,000;

18 per centum of the amount by which the net estate exceeds \$8,000,000 and does not exceed \$9,000,000;

19 per centum of the amount by which the net estate exceeds \$9,000,000 and does not exceed \$10,000,000;

20 per centum of the amount by which the net estate exceeds \$10,000,000.

(b)¹ (1) If a tax has been paid under Title III of the Revenue Act of 1932 on a gift, and thereafter upon the death of the donor any amount in respect of such gift is required to be included in the value of the gross estate of the decedent for the purposes of this title, then there shall be credited against the tax imposed by subdivision (a) of this section the amount of the tax paid under such Title III with respect to so much of the property which constituted the gift as is included in the gross estate, except that the amount of such credit shall not exceed an amount which bears the same ratio to the tax imposed by subdivision (a) of this section as the value (at the time of the gift or at the time of the death, whichever is lower) of so much of the property which constituted the gift as is included in the gross estate, bears to the value of the entire gross estate.

(2) For the purposes of paragraph (1), the amount of tax paid for any year under Title III of the Revenue Act of 1932 with respect to any property shall be an amount which bears the same ratio to the total tax paid for such year as the value of such property bears to the total amount of net gifts (computed without deduction of the specific exemption) for such year.

(c)² The tax imposed by subdivision (a) of this section shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent). The credit allowed by this subdivision shall not exceed 80 per centum of the tax imposed by subdivision (a) (after deducting from such tax the credits provided by subdivision (b)), and shall include only such taxes as were actually paid and credit therefor claimed within four years after the filing of the return required by section 304, except that—

(1) If a petition for redetermination of a deficiency has been filed with the Board of Tax Appeals within the time prescribed in section 308, then within such four-year period or before the expiration of 60 days after the decision of the Board becomes final.

¹ See page 20.

² See page 21.

(2) If, under subdivision (b) of section 305 or subdivision (i) of section 308, an extension of time has been granted for payment of the tax shown on the return, or of a deficiency, then within such four-year period or before the date of the expiration of the period of the extension.

Refund based on the credit may (despite the provisions of section 319) be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest, except that where the overpayment was made prior to the enactment of the Revenue Act of 1932, then interest shall be allowed and paid on the amount refunded at the rate of 6 per centum per annum from the date of the overpayment to the date of such enactment.

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside the United States—³

(a) To the extent of the interest therein of the decedent at the time of his death;

(b) To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower, curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy;

(c)⁴ To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;

(d) (1)⁵ To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona-fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished in contemplation of decedent's death.

(2)⁵ For the purposes of this subdivision the power to alter, amend, or revoke shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, or revocation takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing

³ See page 27.

⁴ See pages 46 and 48.

⁵ See pages 47-49.

the interests which would have been excluded from the power if the decedent had lived, and for such purpose if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given, or the power exercised, on the date of his death.

(3)⁷ The relinquishment of any such power, not admitted or shown to have been in contemplation of the decedent's death, made within two years prior to his death without such a consideration and affecting the interest or interests (whether arising from one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggregate value, at the time of such death, in excess of \$5,000, then, to the extent of such excess, such relinquishment or relinquishments shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;

(e) To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: *Provided*, That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further*, That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants;

(f)⁸ To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of or intended to take effect in possession or enjoyment at or after his death, or (3) by deed under which he has retained for his life or any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession or enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth; and

(g) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over \$40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life.

(h) Except as otherwise specifically provided therein subdivisions (b), (c), (d), (e), (f), and (g) of this section shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after the enactment of this Act.

⁷ See pages 47-49.

⁸ See page 61.

(i) If any one of the transfers, trusts, interests, rights, or powers, enumerated and described in subdivisions (c), (d), and (f) of this section is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

(j)⁹ If the executor so elects upon his return (if filed within the time prescribed by law or prescribed by the Commissioner in pursuance of law), the value of the gross estate shall be determined by valuing all the property included therein on the date of the decedent's death as of the date one year after the decedent's death, except that (1) property included in the gross estate on the date of death and, within one year after the decedent's death, distributed by the executor (or, in the case of property included in the gross estate under subdivision (c), (d), or (f) of this section, distributed by the trustee under the instrument of transfer), or sold, exchanged, or otherwise disposed of, shall be included at its value as of the time of such distribution, sale, exchange, or other disposition, whichever first occurs, instead of its value as of the date one year after the decedent's death, and (2) any interest or estate which is affected by mere lapse of time shall be included at its value as of the time of death (instead of the later date) with adjustment for any difference in its value as of the later date not due to mere lapse of time. No deduction under this title of any item shall be allowed if allowance for such item is in effect given by the valuation under this subdivision. Wherever in any other subdivision or section of this title or in Title II of the Revenue Act of 1932, reference is made to the value of property at the time of the decedent's death, such reference shall be deemed to refer to the value of such property used in determining the value of the gross estate. In case of an election made by the executor under this subdivision, then for the purposes of the deduction under section 303(a) (3) or section 303(b) (3), any bequest, legacy, devise, or transfer enumerated therein shall be valued as of the date of decedent's death with adjustment for any difference in value (not due to mere lapse of time or the occurrence or nonoccurrence of a contingency) of the property as of the date one year after the decedent's death (substituting the date of sale or exchange in the case of property sold or exchanged during such one-year period).

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a citizen or resident of the United States, by deducting from the value of the gross estate—¹⁰

(1)¹⁰ such amounts—

- (A) for funeral expenses,
- (B) for administration expenses,
- (C) for claims against the estate,
- (D) for unpaid mortgages upon, or any indebtedness in respect to, property where the value of decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate, and
- (E) reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent,

⁹ See page 27.

¹⁰ See pages 64 and 65.

as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or property taxes not accrued before his death, or any estate, succession, legacy, or inheritance taxes. The deduction herein allowed in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded upon a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth. There shall also be deducted losses incurred during the settlement of estates arising from fires, storms, shipwrecks, or other casualties, or from theft, when such losses are not compensated for by insurance or otherwise, and if at the time of the filing of the return such losses have not been claimed as a deduction for income tax purposes in an income tax return.

(2)¹² An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under the Revenue Act of 1932, or an estate tax imposed under this or any prior Act of Congress, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate, and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this paragraph in respect of the property or property given in exchange therefor. Where a deduction was allowed of any mortgage or other lien in determining the gift tax, or the estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under this paragraph shall be reduced by the amount so paid. The deduction allowable under this paragraph shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under paragraphs (1), (3), and (4) of this subdivision as the amount otherwise deductible under this paragraph bears to the value of the decedent's gross estate. Where the property referred to in this paragraph consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction.

(3)¹³ The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association,

¹² See pages 71 and 72.

¹³ See page 78.

exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. If the tax imposed by section 301, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate; and

(4) An exemption of \$100,000.

(b) In the case of a nonresident not a citizen of the United States, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—¹⁴

(1)¹⁵ That proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated;

(2)¹⁶ An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under the Revenue Act of 1932, or an estate tax imposed under this or any prior Act of Congress, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in that part of the decedent's gross estate which at the time of his death is situated in the United States, and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this paragraph in respect of the property or property given in exchange therefor. Where a deduction was allowed of any mortgage or other lien in determining the gift tax, or the estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under this paragraph shall be reduced by the amount so paid. The deduction allowable under this paragraph shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under paragraphs (1) and (3) of this subdivision as the amount otherwise deductible under this paragraph bears to the value of that part of the decedent's gross estate which at the time of his death is situated in the United States. Where the property referred to in this paragraph consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction.

(3)¹⁵ The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any domestic corporation organized and operated exclusively

¹⁴ See pages 84 and 86.

¹⁵ See pages 84, 86, and 87.

for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used within the United States by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. If the tax imposed by section 301, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

(c)¹⁸ No deduction shall be allowed in the case of a nonresident not a citizen of the United States unless the executor includes in the return required to be filed under section 304 the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States.

(d)¹⁹ For the purpose of this title, stock in a domestic corporation owned and held by a nonresident not a citizen of the United States shall be deemed property within the United States, and any property of which the decedent has made a transfer, by trust or otherwise, within the meaning of subdivision (c) or (d) of section 302, shall be deemed to be situated in the United States, if so situated either at the time of the transfer, or at the time of the decedent's death. For the purposes of this title, a relinquishment or promised relinquishment of dower, courtesy, or of a statutory estate created in lieu of dower or courtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth."

(e)²⁰ The amount receivable as insurance upon the life of a nonresident not a citizen of the United States, and any moneys deposited with any person carrying on the banking business, by or for a nonresident not a citizen of the United States who was not engaged in business in the United States at the time of his death, shall not, for the purpose of this title, be deemed property within the United States.

(f) Missionaries duly commissioned and serving under boards of foreign missions of the various religious denominations in the United States, dying while in the foreign missionary service of such boards, shall not, by reason merely of their intention to permanently remain in such foreign service, be deemed nonresidents of the United States, but shall be presumed to be residents of the State, the District of Columbia, or the Territories of Alaska or Hawaii wherein they respectively resided at the time of their commission and their departure for such foreign service.

Sec. 304. (a)²¹ The executor, within two months after the decedent's death, or within a like period after qualifying as such, shall give written notice thereof to the collector. The executor shall also, at such times and in such manner as

¹⁸ See pages 86 and 87.

¹⁹ See pages 47 and 83.

²⁰ See page 83.

²¹ See pages 94, 95, and 96.

may be required by regulations made pursuant to law, file with the collector a return under oath in duplicate, setting forth (1) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident not a citizen of the United States, of that part of his gross estate situated in the United States; (2) the deductions allowed under section 303; (3) the value of the net estate of the decedent as defined in section 303; and (4) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

(b)²² Return shall be made in all cases where the gross estate at the death of the decedent exceeds \$100,000, and in the case of the estate of every nonresident not a citizen of the United States any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate.

SEC. 305. (a)²³ The tax imposed by this title shall be due and payable fifteen months after the decedent's death, and shall be paid by the executor to the collector.

(b)²⁴ Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part not to exceed eight years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, and the running of the statute of limitations for assessment and collection, as provided in sections 310(a) and 311(b), shall be suspended for the period of any such extension. If an extension is granted, the Commissioner may require the executor to furnish a bond in such amount, not exceeding double the amount in respect of which the extension is granted, and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the amount in respect of which the extension is granted in accordance with the terms of the extension.

(c)²⁵ If the time for the payment is thus extended there shall be collected, as a part of such amount, interest thereon at the rate of 6 per centum per annum from the expiration of three months after the due date of the tax to the expiration of the period of the extension.

(d) The time for which the Commissioner may extend the time for payment of the estate tax imposed by Title IV of the Revenue Act of 1921 shall be five years.

(e)²⁶ Where there is included in the value of the gross estate the value of a reversionary or remainder interest in property, the payment of the part of the tax imposed by this title attributable to such interest may, at the election of the executor, be postponed until six months after the termination of the precedent interest or interests in the property, and the amount the payment of which is so postponed shall then be payable, together with interest thereon at the rate of 4 per centum per annum from eighteen months after the date of the decedent's death until such amount is paid. The postponement

²² See pages 95 and 96.

²³ See page 116.

²⁴ See page 119.

²⁵ See page 126.

of payment of such amount shall be under such regulations as the Commissioner with the approval of the Secretary may prescribe, and shall be upon condition that the executor, or any other person liable for the tax, shall furnish a bond in such an amount, and with such sureties, as the Commissioner deems necessary, conditioned upon the payment within six months after the termination of such precedent interest or interests of the amount the payment of which is so postponed, together with interest thereon, as above provided. Such part of any estate, inheritance, legacy, or succession taxes allowable as a credit against the tax imposed by this title as is attributable to such reversionary or remainder interest may be allowed as a credit against the tax attributable to such interest, subject to the percentage limitation contained in section 301(c), if such part is paid, and credit therefor claimed, at any time prior to the expiration of 60 days after the termination of the precedent interest or interests in the property.

SEC. 306. As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax.

SEC. 307. As used in this title in respect of a tax imposed by this title the term "deficiency" means—

(1) The amount by which the tax imposed by this title exceeds the amount shown as the tax by the executor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the executor upon his return, or if no return is made by the executor, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax.

SEC. 308. (a)²⁶ If the Commissioner determines that there is a deficiency in respect of the tax imposed by this title, the Commissioner is authorized to send notice of such deficiency to the executor by registered mail. Within 90 days after such notice is mailed (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day), the executor may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. Except as otherwise provided in subdivision (d) or (f) of this section or in section 312 or 1001, no assessment of a deficiency in respect of the tax imposed by this title and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the executor, nor until the expiration of such 90-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3224 of the Revised Statutes the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

(b) If the executor files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the decision of the Board which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

²⁶ See pages 104 and 108.

(c) If the executor does not file a petition with the Board within the time prescribed in subdivision (a) of this section, the deficiency, notice of which has been mailed to the executor, shall be assessed, and shall be paid upon notice and demand from the collector.

(d) The executor shall at any time have the right, by a signed notice in writing filed with the Commissioner, to waive the restrictions provided in subdivision (a) of this section on the assessment and collection of the whole or any part of the deficiency.

(e) The Board shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the executor, and to determine whether any additional amount or addition to the tax should be assessed, if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) If after the enactment of this Act the Commissioner has mailed to the executor notice of a deficiency as provided in subdivision (a), and the executor files a petition with the Board within the time prescribed in such subdivision, the Commissioner shall have no right to determine any additional deficiency, except in the case of fraud, and except as provided in subdivision (e) of this section or in subdivision (c) of section 312. If the executor is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered, for the purposes of this subdivision or of subdivision (a) of this section, or of section 319, as a notice of a deficiency, and the executor shall have no right to file a petition with the Board of Tax Appeals based on such notice, nor shall such assessment or collection be prohibited by the provisions of subdivision (a) of this section.

(g) For the purposes of this title the date on which a decision of the Board becomes final shall be determined according to the provisions of section 1005.

(h) Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the due date of the tax to the date the deficiency is assessed, or, in the case of a waiver under subdivision (d) of this section, to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier.

(i)²⁷ Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner, with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax), may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of four years. If an extension is granted, the Commissioner may require the executor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. In such case the running of the statute of limitations for assessment and collection, as provided in sections 310(a) and 311(b), shall be suspended for the period of any such extension, and there shall be collected, as a part of the tax, interest on the part of the

²⁷ See page 120.

deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. If the part of the deficiency the time for payment of which is so extended is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 1 per centum a month for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period.

(j) The 50 per centum addition to the tax provided by section 3176 of the Revised Statutes, as amended, shall, when assessed after the enactment of this Act in connection with an estate tax, be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of subdivision (h) of this section shall not be applicable.

SEC. 309. (a) (1) Where the amount determined by the executor as the tax imposed by this title, or any part of such amount, is not paid on the due date of the tax, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 1 per centum a month from the due date until it is paid.

(2) Where an extension of time for payment of the amount so determined as the tax by the executor has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under subdivision (c) of section 305, is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subdivision, interest at the rate of 1 per centum a month shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) Where a deficiency, or any interest assessed in connection therewith under subdivision (h) of section 308, or any addition to the tax provided for in section 3176 of the Revised Statutes, as amended, is not paid in full within 30 days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 1 per centum a month from the date of such notice and demand until it is paid.

(c) If a bond is filed, as provided in section 312, the provisions of subdivision (b) of this section shall not apply to the amount covered by the bond.

SEC. 310. (a) Except as provided in section 311, the amount of the estate taxes imposed by this title shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of three years after the return was filed.

(b)²⁸ The running of the statute of limitations provided in this section or in section 311 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under subdivision (a) of section 308) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

SEC. 311. (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceed-

²⁸ See pages 111 and 114.

ing in court for the collection of such tax may be begun without assessment, at any time.

(b) Where the assessment of any tax imposed by this title or of any estate or gift tax imposed by prior Act of Congress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the executor.

(c) This section shall not bar a distraint or proceeding in court begun before the enactment of the Revenue Act of 1924; nor shall it authorize the assessment of a tax or the collection thereof by distraint or by proceeding in court (1) if at the time of the enactment of this Act such assessment, distraint, or proceeding was barred by the statutory period of limitation properly applicable thereto, unless prior to the enactment of this Act the Commissioner and the executor agreed in writing thereto, or (2) contrary to the provisions of subdivision (a) of section 308 of this Act.

SEC. 312. (a) If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall immediately assess such deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) and notice and demand shall be made by the collector for the payment thereof.

(b) If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under subdivision (a) of section 308, then the Commissioner shall mail a notice under such subdivision within 60 days after the making of the assessment.

(c) The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the executor, despite the provisions of subdivision (f) of section 308 and whether or not the executor has theretofore filed a petition with the Board of Tax Appeals. The Commissioner shall notify the Board of the amount of such assessment, if the petition is filed with the Board before the making of the assessment or is subsequently filed, and the Board shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) If the jeopardy assessment is made after the decision of the Board is rendered such assessment may be made only in respect of the deficiency determined by the Board in its decision.

(e) A jeopardy assessment may not be made after the decision of the Board has become final or after the executor has filed a petition for review of the decision of the Board.

(f) When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in subdivision (j) of this section.

(g) If the bond is given before the executor has filed his petition with the Board under subdivision (a) of section 308, the bond shall contain a further

condition that if a petition is not filed within the period provided in such subdivision, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision.

(h) Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The executor shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the executor, be proportionately reduced. If the Board determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Board is rendered the bond shall, at the request of the executor, be proportionately reduced.

(i) When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

(j) In the case of the amount collected under subdivision (i) there shall be collected at the same time as such amount, and as a part of the tax, interest at the rate of 6 per centum per annum upon such amount from the date of the jeopardy notice and demand to the date of notice and demand under subdivision (i) of this section, or, in the case of the amount collected in excess of the amount of the jeopardy assessment, interest as provided in subdivision (h) of section 308. If the amount included in the notice and demand from the collector under subdivision (i) of this section is not paid in full within 30 days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 1 per centum a month from the date of such notice and demand until it is paid.

(k) No claim in abatement shall be filed in respect of any assessment made after the enactment of this Act in respect of any estate or gift tax.

SEC. 313. (a) The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

(b) If the executor makes written application to the Commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Commissioner (as soon as possible, and in any event within one year after the making of such application, or, if the application is made before the return is filed, then within one year after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in section 310) shall notify the executor of the amount of the tax. The executor, upon payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

(c) The provisions of subdivision (b) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless the title to such part of the gross estate has passed to a bona fide purchaser for value, in which case such part shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

SEC. 314. (a) If the tax herein imposed is not paid on or before the due date thereof the collector shall, upon instruction from the Commissioner, proceed to collect the tax under the provisions of general law, or commence appropriate proceedings in any court of the United States having jurisdiction, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. This subdivision in so far as it applies to the collection of a deficiency shall be subject to the provisions of section 308.

(b) If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution. If any part of the gross estate consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds, in excess of \$40,000, of such policies bear to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio.

SEC. 315. (a)²⁹ Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

(b)²⁹ If (1) except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death, or makes a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession or enjoyment

²⁹ See page 133.

of, or the right to the income from, the property, or (B), the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom, or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

SEC. 316. (a) The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this title (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) The liability, at law or in equity, of a transferee of property of a decedent or donor, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed by this title or by any prior estate tax Act or by any gift tax Act.

(2) The liability of a fiduciary under section 3467 of the Revised Statutes in respect of the payment of any such tax from the estate of the decedent or donor.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the executor or donor; or

(2) If the period of limitation for assessment against the executor expired before the enactment of this Act but assessment against the executor was made within such period,—then within six years after the making of such assessment against the executor, but in no case later than one year after the enactment of this Act.

(3) If a court proceeding against the executor or donor for the collection of the tax has been begun within either of the above periods,—then within one year after return of execution in such proceeding.

(c)³⁰ The running of the statute of limitations upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under subdivision (a) of section 308 to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

³⁰ See page 156.

(d) This section shall not apply to any suit or other proceeding for the enforcement of the liability of a transferee or fiduciary pending at the time of the enactment of this Act.

(e) As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee.

SEC. 317. (a) Upon notice to the Commissioner that any person is acting as executor, such person shall assume the powers, rights, duties, and privileges of an executor in respect of a tax imposed by this title or by any prior estate tax Act, until notice is given that such person is no longer acting as executor.

(b) Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 316, the fiduciary shall assume on behalf of such person the powers, rights, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person), until notice is given that the fiduciary capacity has terminated.

(c) Notice under subdivision (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

(d) In the absence of any notice to the Commissioner under subdivision (a) or (b), notice under this title of a deficiency or other liability, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for the purposes of this title.

SEC. 318. (a) If after the enactment of this Act the Commissioner determines that any assessment should be made in respect of any estate or gift tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or by any such Act as amended, the Commissioner is authorized to send by registered mail to the person liable for such tax notice of the amount proposed to be assessed, which notice shall, for the purposes of this Act, be considered a notice under subdivision (a) of section 308 of this Act. In the case of any such determination the amount which should be assessed (whether as deficiency or additional tax or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in case of delinquency in payment after notice and demand and the provisions prohibiting claims and suits for refund) as in the case of a deficiency in the tax imposed by this title, except that in the case of an estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, the period of limitation prescribed in section 1109 of this Act shall be applied in lieu of the period prescribed in subdivision (a) of section 310.

(b) If before the enactment of this Act any person has appealed to the Board of Tax Appeals under subdivision (a) of section 308 of the Revenue Act of 1924 (if such appeal relates to a tax imposed by Title III of such Act or to so much of an estate tax imposed by any of the prior Acts enumerated in subdivision (a) of this section as was not assessed before June 3, 1924), and the appeal is pending before the Board at the time of the enactment of this Act, the Board shall have jurisdiction of the appeal. In all such cases the powers, duties, rights, and privileges of the Commissioner and of the person who has brought the appeal, and the jurisdiction of the Board and of the courts, shall be determined, and the computation of the tax shall be made, in the same manner as provided in subdivision (a) of this section, except as provided in subdivision (h) of this section and except that the person liable for the tax shall not be subject to the provisions of subdivision (a) of section 319.

(c) If before the enactment of this Act the Commissioner has mailed to any person a notice under subdivision (a) of section 308 of the Revenue Act of 1924 (whether in respect of a tax imposed by Title III of such Act or in respect of so much of an estate tax imposed by any of the prior Acts enumerated in subdivision (a) of this section as was not assessed before June 3, 1924), and if the 60-day period referred to in such subdivision has not expired before the enactment of this Act and no appeal has been filed before the enactment of this Act, such person may file a petition with the Board in the same manner as if a notice of deficiency had been mailed after the enactment of this Act in respect of a deficiency in a tax imposed by this title. In such cases the 60-day period referred to in subdivision (a) of section 308 of this Act shall begin on the date of the enactment of this Act, and the powers, duties, rights, and privileges of the Commissioner and of the person entitled to file the petition, and the jurisdiction of the Board and of the courts, shall, whether or not the petition is filed, be determined, and the computation of the tax shall be made, in the same manner as provided in subdivision (a) of this section.

(d) If any deficiency in any estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, was assessed before June 3, 1924, but was not paid in full before the date of the enactment of this Act, and if the Commissioner, after the enactment of this Act, finally determines the amount of the deficiency, he is authorized to send by registered mail to the person liable for such tax notice of such deficiency, which notice shall, for the purposes of this Act, be considered a notice under subdivision (a) of section 308 of this Act. In the case of any such final determination the amount of the tax (whether as deficiency or additional tax or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in cases of delinquency in payment after notice and demand, and the provisions relating to claims and suits for refund) as in the case of a deficiency in the tax imposed by this title, except as otherwise provided in subdivision (g) of this section, and except that the period of limitation prescribed in section 1109 of this Act shall be applied in lieu of the period prescribed in subdivision (a) of section 310.

(e) If any deficiency in any estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, was assessed before June 3, 1924, but was not paid in full before that date, and if the Commissioner after June 2, 1924, but before the enactment of this Act, finally determined the amount of the deficiency, and if the person liable for such tax appealed before the enactment of this Act to the Board of Tax Appeals and the appeal is pending before the Board at the time of the enactment of this Act, the Board shall have jurisdiction of the appeal. In all such cases the powers, duties, rights, and privileges of the Commissioner and of the person who has brought the appeal, and the jurisdiction of the Board and of the courts, shall be determined, and the computation of the tax shall be made, in the same manner as provided in subdivision (d) of this section, except as provided in subdivision (h) of this section and except that the person liable for the tax shall not be subject to the provisions of subdivision (a) of section 319.

(f) If any deficiency in any estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as

amended, was assessed before June 3, 1924, but was not paid in full before the date of the enactment of this Act, and if the Commissioner after June 2, 1924, finally determined the amount of the deficiency, and notified the person liable for such tax to that effect less than 60 days prior to the enactment of this Act and no appeal has been filed before the enactment of this Act, the person so notified may file a petition with the Board in the same manner as if a notice of deficiency had been mailed after the enactment of this Act in respect of a deficiency in a tax imposed by this title. In such cases the 60-day period referred to in subdivision (a) of section 308 of this Act shall begin on the date of the enactment of this Act, and, whether or not the petition is filed, the powers, duties, rights, and privileges of the Commissioner and of the person who is so notified, and the jurisdiction of the Board and of the courts, shall be determined, and the computation of the tax be made, in the same manner as provided in subdivision (d) of this section.

(g) In cases within the scope of subdivision (d), (e), or (f), if the Commissioner believes that the collection of the deficiency will be jeopardized by delay, he may, despite the provisions of subdivision (a) of section 308 of this Act, instruct the collector to proceed to enforce the payment of the unpaid portion of the deficiency, and notice and demand shall be made by the collector for the payment thereof. Within 30 days after such jeopardy notice and demand the person liable for the tax may obtain a stay of collection of the whole or any part of the amount included in the notice and demand by filing with the collector a bond in like manner, under the same conditions, and with the same effect, as in the case of a bond to stay the collection of a jeopardy assessment under section 312 of this Act.

(h) In cases within the scope of subdivision (b) or (e) of this section where any hearing before the Board has been held before the enactment of this Act and the decision is rendered after the enactment of this Act, such decision shall, for the purposes of this title, be considered to have become final upon the date when it is rendered and neither party shall have any right to petition for a review of the decision. The Commissioner may, within one year from the time the decision is rendered, begin a proceeding in court for the collection of any part of the amount disallowed by the Board, unless the statutory period of limitations properly applicable thereto has expired before the appeal was taken to the Board. The court shall include in its judgment interest upon the amount thereof in the same cases, at the same rate, and for the same period, as if such amount were collected otherwise than by proceeding in court. In any such proceeding by the Commissioner or in any suit by the taxpayer for a refund, the findings of the Board shall be prima facie evidence of the facts therein stated.

(i) Where before the enactment of this Act a jeopardy assessment has been made under subdivision (d) of section 308 of the Revenue Act of 1924 (whether of a deficiency in the tax imposed by Title III of such Act or of a deficiency in an estate tax imposed by any of the prior Acts enumerated in subdivision (a) of this section) all proceedings after the enactment of this Act shall be the same as under the Revenue Act of 1924 as amended by this Act, except that—

(1) A decision of the Board rendered after the enactment of this Act where no hearing has been held by the Board before the enactment of this Act may be reviewed in the same manner as provided in this Act in the case of a tax imposed by this title;

(2) Where no hearing has been held by the Board before the enactment of this Act, the Commissioner shall have no right to begin a proceeding in court for the collection of any part of the deficiency disallowed by the Board; and

(3) In the consideration of the case the jurisdiction and powers of the Board shall be the same as provided in this Act in the case of a tax imposed by this title.

(j) In the case of any estate or gift tax imposed by prior Act of Congress, in computing the period of limitations provided in section 310 or 311 of this Act on the making of assessments and the beginning of distraint or a proceeding in court, the running of the statute of limitations shall be considered to have been suspended (in addition to the period of suspension provided for in subdivision (b) of section 310) for any period prior to the enactment of this Act during which the Commissioner was prohibited from making the assessment or beginning distraint or proceeding in court.

SEC. 319. (a) If the Commissioner has mailed to the executor a notice of deficiency under subdivision (a) of section 308 and if the executor after the enactment of this Act files a petition with the Board of Tax Appeals within the time prescribed in such subdivision, no refund in respect of the tax shall be allowed or made and no suit for the recovery of any part of such tax shall be instituted in any court, except—

(1) As provided in subdivision (c) of this section or in subdivision (1) of section 312 or in subdivision (b), (e), or (g) of section 318 or in subdivision (d) of section 1001; and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the Board which has become final; and

(3) As to any amount collected after the statutory period of limitations upon the beginning of distraint or a proceeding in court for collection has expired; but in any such suit for refund the decision of the Board which has become final, as to whether such period had expired before the notice of deficiency was mailed, shall be conclusive.

(b)⁸¹ All claims for the refunding of the tax imposed by this title alleged to have been erroneously or illegally assessed or collected must be presented to the Commissioner within three years next after the payment of such tax. The amount of the refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the three years immediately preceding the allowance of the refund.

(c)⁸² If the Board finds that there is no deficiency and further finds that the executor has made an overpayment of tax, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Board has become final, be credited or refunded to the executor as provided in section 3220 of the Revised Statutes, as amended. No such refund shall be made of any portion of the tax unless the Board determines as part of its decision that it was paid within four years (or in the case of a tax imposed by this title, within three years) before the filing of the claim or the filing of the petition, whichever is earlier.

SEC. 320. (a) Whoever knowingly makes any false statement in any notice or return required to be filed under this title shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both.

(b) Whoever fails to comply with any duty imposed upon him by section 304, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate

⁸¹ See pages 142 and 146.

⁸² See pages 142, 146, and 147.

of the decedent, fails to exhibit the same upon request to the Commissioner or any collector or law officer of the United States or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this title, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

SEC. 321. (a) The term "resident" as used in this title includes a citizen of the United States with respect to whose property any probate or administration proceedings are had in the United States Court for China. Where no part of the gross estate of such decedent is situated in the United States at the time of his death, the total amount of tax due under this title shall be paid to or collected by the clerk of such court, but where any part of the gross estate of such decedent is situated in the United States at the time of his death, the tax due under this title shall be paid to or collected by the collector of the district in which is situated the part of the gross estate in the United States, or, if such part is situated in more than one district, then the collector of such district as may be designated by the Commissioner.

(b) For the purpose of this section the clerk of the United States Court for China shall be a collector for the territorial jurisdiction of such court, and taxes shall be collected by and paid to him in the same manner and subject to the same provisions of law, including penalties, as the taxes collected by and paid to a collector in the United States.

TITLE II, REVENUE ACT OF 1932, AS AMENDED

ADDITIONAL ESTATE TAX

(With references to pages showing provisions as originally enacted and describing the amendments)

SEC. 401. IMPOSITION OF TAX.

(a) In addition to the estate tax imposed by section 301 (a) of the Revenue Act of 1926, there is hereby imposed upon the transfer of the net estate of every decedent dying after the enactment of this Act, whether a resident or nonresident of the United States, a tax equal to the excess of—

(1) the amount of a tentative tax computed under subsection (b) of this section, over

(2) the amount of the tax imposed by section 301 (a) of the Revenue Act of 1926, computed without regard to the provisions of this title.

(b)³³ The tentative tax referred to in subsection (a) (1) of this section shall equal the sum of the following percentages of the value of the net estate:

Upon net estates not in excess of \$10,000, 2 per centum.

\$200 upon net estates of \$10,000; and upon net estates in excess of \$10,000 and not in excess of \$20,000, 4 per centum in addition of such excess.

\$600 upon net estates of \$20,000; and upon net estates in excess of \$20,000 and not in excess of \$30,000, 6 per centum in addition of such excess.

\$1,200 upon net estates of \$30,000; and upon net estates in excess of \$30,000 and not in excess of \$40,000, 8 per centum in addition of such excess.

\$2,000 upon net estates of \$40,000; and upon net estates in excess of \$40,000 and not in excess of \$50,000, 10 per centum in addition of such excess.

\$3,000 upon net estates of \$50,000; and upon net estates in excess of \$50,000 and not in excess of \$70,000, 12 per centum in addition of such excess.

³³ See pages 2, 4, and 6.

\$5,400 upon net estates of \$70,000; and upon net estates in excess of \$70,000 and not in excess of \$100,000, 14 per centum in addition of such excess.

\$9,600 upon net estates of \$100,000; and upon net estates in excess of \$100,000 and not in excess of \$200,000; 17 per centum in addition of such excess.

\$26,600 upon net estates of \$200,000; and upon net estates in excess of \$200,000 and not in excess of \$400,000, 20 per centum in addition of such excess.

\$66,600 upon net estates of \$400,000; and upon net estates in excess of \$400,000 and not in excess of \$600,000, 23 per centum in addition of such excess.

\$112,600 upon net estates of \$600,000; and upon net estates in excess of \$600,000 and not in excess of \$800,000, 26 per centum in addition of such excess.

\$164,600 upon net estates of \$800,000; and upon net estates in excess of \$800,000 and not in excess of \$1,000,000, 29 per centum in addition of such excess.

\$222,600 upon net estates of \$1,000,000; and upon net estates in excess of \$1,000,000 and not in excess of \$1,500,000, 32 per centum in addition of such excess.

\$382,600 upon net estates of \$1,500,000; and upon net estates in excess of \$1,500,000 and not in excess of \$2,000,000, 35 per centum in addition of such excess.

\$557,600 upon net estates of \$2,000,000; and upon net estates in excess of \$2,000,000 and not in excess of \$2,500,000, 38 per centum in addition of such excess.

\$747,600 upon net estates of \$2,500,000; and upon net estates in excess of \$2,500,000 and not in excess of \$3,000,000, 41 per centum in addition of such excess.

\$952,600 upon net estates of \$3,000,000; and upon net estates in excess of \$3,000,000 and not in excess of \$3,500,000, 44 per centum in addition of such excess.

\$1,172,600 upon net estates of \$3,500,000; and upon net estates in excess of \$3,500,000 and not in excess of \$4,000,000, 47 per centum in addition of such excess.

\$1,407,600 upon net estates of \$4,000,000; and upon net estates in excess of \$4,000,000 and not in excess of \$4,500,000, 50 per centum in addition of such excess.

\$1,657,600 upon net estates of \$4,500,000; and upon net estates in excess of \$4,500,000 and not in excess of \$5,000,000, 53 per centum in addition of such excess.

\$1,922,600 upon net estates of \$5,000,000; and upon net estates in excess of \$5,000,000 and not in excess of \$6,000,000, 56 per centum in addition of such excess.

\$2,482,600 upon net estates of \$6,000,000; and upon net estates in excess of \$6,000,000 and not in excess of \$7,000,000, 59 per centum in addition of such excess.

\$3,072,600 upon net estates of \$7,000,000; and upon net estates in excess of \$7,000,000 and not in excess of \$8,000,000, 61 per centum in addition of such excess.

\$3,682,600 upon net estates of \$8,000,000; and upon net estates in excess of \$8,000,000 and not in excess of \$9,000,000, 63 per centum in addition of such excess.

\$4,312,600 upon net estates of \$9,000,000; and upon net estates in excess of \$9,000,000 and not in excess of \$10,000,000, 65 per centum in addition of such excess.

\$4,962,600 upon net estates of \$10,000,000; and upon net estates in excess of \$10,000,000 and not in excess of \$20,000,000, 67 per centum in addition of such excess.

\$11,662,600 upon net estates of \$20,000,000; and upon net estates in excess of \$20,000,000 and not in excess of \$50,000,000, 69 per centum in addition of such excess.

\$32,362,600 upon net estates of \$50,000,000; and upon net estates in excess of \$50,000,000, 70 per centum in addition of such excess.

(c)³⁴ For the purposes of this section the value of the net estate shall be determined as provided in Title III of the Revenue Act of 1926, as amended, except that in lieu of the exemption of \$100,000 provided in section 303(a) (4) of such Act, the exemption shall be \$40,000.

SEC. 402. CREDITS AGAINST TAX.

(a) The credit provided in section 301(c) of the Revenue Act of 1926, as amended (80 per centum credit), shall not be allowed in respect of such additional tax.

(b) (1) If a tax has been paid under Title III of this Act on a gift, and thereafter upon the death of the donor any amount in respect of such gift is required to be included in the value of the gross estate of the decedent for the purposes of this title, then there shall be credited against the tax imposed by section 401 of this Act the amount of the tax paid under such Title III with respect to so much of the property which constituted the gift as is included in the gross estate, except that the amount of such credit (A) shall not exceed an amount which bears the same ratio to the tax imposed by section 401 of this Act as the value (at the time of the gift or at the time of the death, whichever is lower) of so much of the property which constituted the gift as is included in the gross estate, bears to the value of the entire gross estate, and (B) shall not exceed the amount by which the gift tax paid under Title III of this Act with respect to so much of the property as constituted the gift as is included in the gross estate, exceeds the amount of the credit under section 301(b) of the Revenue Act of 1926, as amended by this Act.

(2) For the purposes of paragraph (1), the amount of tax paid for any year under Title III of this Act with respect to any property shall be an amount which bears the same ratio to the total tax paid for such year as the value of such property bears to the total amount of net gifts (computed without deduction of the specific exemption) for such year.

SEC. 403.³⁵ ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 402, the tax imposed by section 401 of this Act shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by section 301(a) of the Revenue Act of 1926, except that in the case of a citizen or resident of the United States a return shall be required if the value of the gross estate at the time of the decedent's death exceeds \$40,000.

³⁴ See page 82.

³⁵ See page 91.

LIST OF THE DIVISIONS AND LOCATIONS OF OFFICES OF INTERNAL REVENUE AGENTS IN CHARGE

(Communications should be addressed:

United States Internal Revenue Agent in Charge,

-----, -----)
City State

Territory embraced	Name of division	Location of office
Alabama-----	Nashville-----	Nashville, Tenn.
Alaska-----	Seattle-----	Seattle, Wash.
Arizona-----	Los Angeles-----	Los Angeles, Calif.
Arkansas-----	Oklahoma-----	Oklahoma City, Okla.
California:		
Counties of Monterey, Kings, Tulare, Inyo, and counties north.	San Francisco-----	San Francisco, Calif.
Counties of San Luis Obispo, Kern, San Bernardino, and counties south.	Los Angeles-----	Los Angeles, Calif.
Colorado-----	Denver-----	Denver, Colo.
Connecticut-----	New Haven-----	New Haven, Conn.
Delaware-----	Baltimore-----	Baltimore, Md.
District of Columbia-----	do-----	Do.
Florida-----	Jacksonville-----	Jacksonville, Fla.
Georgia-----	Atlanta-----	Atlanta, Ga.
Hawaii-----	Honolulu-----	Honolulu, Hawaii.
Idaho-----	Salt Lake-----	Salt Lake City, Utah.
Illinois:		
Counties of Mercer, Henry, Stark, Marshall, La Salle, Grundy, Kankakee, and counties north.	Chicago-----	Chicago, Ill.
Counties of Henderson, War- ren, Knox, Peoria, Wood- ford, Livingston, Ford, Iroquois, and counties south.	Springfield-----	Springfield, Ill.
Indiana-----	Indianapolis-----	Indianapolis, Ind.
Iowa-----	Omaha-----	Omaha, Nebr.
Kansas-----	Wichita-----	Wichita, Kans.
Kentucky-----	Louisville-----	Louisville, Ky.
Louisiana-----	New Orleans-----	New Orleans, La.
Maine-----	Boston-----	Boston, Mass.
Maryland-----	Baltimore-----	Baltimore, Md.
Massachusetts-----	Boston-----	Boston, Mass.
Michigan-----	Detroit-----	Detroit, Mich.
Minnesota-----	St. Paul-----	St. Paul, Minn.
Mississippi-----	New Orleans-----	New Orleans, La.
Missouri-----	St. Louis-----	St. Louis, Mo.
Montana-----	Salt Lake-----	Salt Lake City, Utah.
Nebraska-----	Omaha-----	Omaha, Nebr.
Nevada-----	San Francisco-----	San Francisco, Calif.

Territory embraced	Name of division	Location of office
New Hampshire.....	Boston.....	Boston, Mass.
New Jersey.....	Newark.....	Newark, N. J.
New Mexico.....	Denver.....	Denver, Colo.
New York:		
Counties of Kings, Nassau, Queens, Richmond, and Suffolk.	Brooklyn.....	Brooklyn, N. Y.
County of New York, north to Twenty-third Street.	Second New York..	17 Battery Place, New York, N. Y.
County of New York, north of and including Twenty-third Street, and counties of Bronx and Westchester.	Upper New York..	807 U. S. Parcel Post Building, 341 Ninth Ave., New York, N. Y.
Counties of Rockland, Orange, Putnam, and counties north and west.	Buffalo.....	Buffalo, N. Y.
North Carolina.....	Greensboro.....	Greensboro, N. C.
North Dakota.....	St. Paul.....	St. Paul, Minn.
Ohio:		
Counties of Preble, Miami, Clark, Madison, Union, Marion, Morrow, Knox, Coshocton, Guernsey, Noble, Washington, and counties south.	Cincinnati.....	Cincinnati, Ohio.
Counties of Darke, Shelby, Champaign, Logan, Hardin, Wyandot, Crawford, Richland, Ashland, Holmes, Tuscarawas, Harrison, Belmont, Monroe, and counties north.	Cleveland.....	Cleveland, Ohio.
Oklahoma.....	Oklahoma.....	Oklahoma City, Okla.
Oregon.....	Seattle.....	Seattle, Wash.
Pennsylvania:		
Counties of Potter, Clinton, Center, Blair, Bedford, and counties east.	Philadelphia.....	Philadelphia, Pa.
Counties of McKean, Cameron, Clearfield, Cambria, Somerset, and counties west.	Pittsburgh.....	Pittsburgh, Pa.
Rhode Island.....	New Haven.....	New Haven, Conn.
South Carolina.....	Columbia.....	Columbia, S. C.
South Dakota.....	St. Paul.....	St. Paul, Minn.
Tennessee.....	Nashville.....	Nashville, Tenn.
Texas.....	Dallas.....	Dallas, Tex.
Utah.....	Salt Lake.....	Salt Lake City, Utah.
Vermont.....	Boston.....	Boston, Mass.
Virginia.....	Richmond.....	Richmond, Va.
Washington.....	Seattle.....	Seattle, Wash.
West Virginia.....	Huntington.....	Huntington, W. Va.
Wisconsin.....	Milwaukee.....	Milwaukee, Wis.
Wyoming.....	Denver.....	Denver, Colo.

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U. S. TREASURY DEPARTMENT
BUREAU OF INTERNAL REVENUE

REGULATIONS 105

RELATING TO THE

ESTATE TAX

UNDER THE
INTERNAL REVENUE CODE



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1942

EXPLANATION OF REGULATIONS

Scope.—These regulations deal with the estate tax imposed by chapter 3 of the Internal Revenue Code, as amended by the Revenue Acts of 1939, 1940, and 1941, and Joint Resolution (Public Law 18, 77th Congress) approved March 17, 1941, with certain general administrative provisions under chapters 34 to 38, inclusive, of the Code, and with certain other statutes not included in the Code which are of general application to the estate tax imposed by the Code.

Arrangement.—For the purpose of identification of the sections under chapter 3 of the Internal Revenue Code set forth in the regulations, the applicable subchapter and part of such subchapter are indicated in brackets immediately following the number of the sections.

Each section, subsection, or paragraph of the Internal Revenue Code appearing in the regulations is followed by the section or sections (if any) of the prescribed regulations. Sections of the Code so set forth are readily distinguishable from the prescribed regulation sections since the latter appear in larger type and bear a number commencing with 81 and a decimal point. Use of the number "81" is made in numbering the sections since the regulations constitute Part 81 of Title 26 of the Code of Federal Regulations. Identifying portions of the section numbers (following 81.) begin with "1" and follow in sequence.

Except as otherwise indicated, the statutory references are to the Internal Revenue Code.

Appendix.—The Appendix to the regulations contains (1) provisions of law and regulations governing the inspection of estate tax and certain other returns filed under the Internal Revenue Code, (2) regulations relative to the payment of the tax with United States notes, (3) section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940 relative to statutes of limitations as affected by the period of military service, (4) a list of the divisions and location of offices of internal revenue agents in charge, and (5) a list of the field divisions of the Technical Staff, showing the location of their offices and the territory embraced.

Table of Contents.—The regulations are preceded by a table of contents which shows the order in which the sections of the Internal Revenue Code and the regulations sections are arranged and the pages on which they are located.

Index.—Following the Appendix is a general index to the material contained in the regulations and the Appendix.

TITLE 26—INTERNAL REVENUE
CHAPTER I—BUREAU OF INTERNAL REVENUE

Subchapter B—Part 81
(CODE OF FEDERAL REGULATIONS)

REGULATIONS 105

RELATING TO THE

ESTATE TAX

**UNDER CHAPTER 3 OF THE INTERNAL REVENUE
CODE, AS AMENDED***

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PERTINENT ENACTING PROVISIONS

OF THE

INTERNAL REVENUE CODE

[Act Feb. 10, 1939, 53 Stat., Part 1]

AN ACT

To consolidate and codify the internal revenue laws of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the laws of the United States hereinafter codified and set forth as a part of this act under the heading "Internal Revenue Title" are hereby enacted into law.

SEC. 2. CITATION.—This act and the internal revenue title incorporated herein shall be known as the Internal Revenue Code and may be cited as "I. R. C."

SEC. 3. EFFECTIVE DATE.—Except as otherwise provided herein, this act shall take effect on the day following the date of its enactment.

SEC. 4. REPEAL AND SAVINGS PROVISIONS.—(a) The Internal Revenue Title, as hereinafter set forth, is intended to include all general laws of the United States and parts of such laws, relating exclusively to internal revenue, in force on the 2d day of January 1939 (1) of a permanent nature and (2) of a temporary nature if embraced in said Internal Revenue Title. In furtherance of that purpose, all such laws and parts of laws codified herein, to the extent they relate exclusively to internal revenue, are repealed, effective, except as provided in section 5, on the day following the date of the enactment of this act.

(b) Such repeal shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal, but all rights and liabilities under said acts shall continue, and may be enforced in the same manner, as if said repeal had not been made; nor shall any office, position, employment, board, or committee, be abolished by such repeal, but the same shall continue under the pertinent provisions of the Internal Revenue Title.

(c) All offenses committed, and all penalties or forfeitures incurred under any statute hereby repealed, may be prosecuted and punished in the same manner and with the same effect as if this act had not been passed.

(d) All acts of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, hereby repealed shall not be affected thereby, but all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising, or acts done or committed, prior to said repeal, may be commenced and prosecuted within the same time as if this act had not been passed.

(e) The authority vested in the President of the United States, or in any officer or officers of the Treasury Department, by the law as it existed immediately prior to the enactment of this act, hereafter to give publicity to tax returns required under any internal revenue law in force immediately prior to the enactment of this act or any information therein contained, and to furnish copies thereof and to prescribe the terms and conditions upon which such publicity may be given or such copies furnished, and to make rules and regulations with respect to such publicity, is hereby preserved. And the provisions of law authorizing such publicity and prescribing the terms, conditions, limitations, and restrictions upon such publicity and upon the use of the information gained through such publicity and the provisions of law prescribing penalties for unlawful publicity of such returns and for unlawful use of such information are hereby preserved and continued in full force and effect.

SEC. 5. CONTINUANCE OF EXISTING LAW.—Any provision of law in force on the 2d day of January 1939 corresponding to a provision contained in the Internal Revenue Title shall remain in force until the corresponding provision under such Title takes effect.

SEC. 6. ARRANGEMENT, CLASSIFICATION, AND CROSS REFERENCES.—The arrangement and classification of the several provisions of the Internal Revenue Title have been made for the purpose of a more convenient and orderly arrangement of the same, and, therefore, no inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion thereof, nor shall any outline, analysis, cross reference, or descriptive matter relating to the contents of said Title be given any legal effect.

SEC. 7. EFFECT UPON SUBSEQUENT LEGISLATION.—The enactment of this act shall not repeal nor affect any act of Congress passed since the 2d day of January 1939, and all acts passed since that date shall have full effect as if passed after the enactment of this act; but, so far as such acts vary from, or conflict with, any provision contained in this act, they are to have effect as subsequent statutes, and as repealing any portion of this act inconsistent therewith.

* * * * *

REGULATIONS 105

INTRODUCTORY PROVISIONS

SEC. 800. [Part I, Subchapter A.] APPLICATION OF SUBCHAPTER.

The provisions of this subchapter shall apply only to estates of decedents dying after the date of the enactment of this title. Estate taxes in the case of decedents dying on or prior to the date of the enactment of this title shall not be affected by the provisions of this subchapter, but shall remain subject to the applicable provisions of the Revenue Act of 1926 and prior revenue acts, except as such provisions are modified by legislation enacted subsequent to the Revenue Act of 1926.

SEC. 801. [Part I, Subchapter A.] CLASSIFICATION OF PROVISIONS.

The provisions of this subchapter are herein classified and designated as—

Part I—Introductory provisions.

Part II—Citizens or residents of the United States.

Part III—Nonresidents not citizens of the United States.

Part IV—Supplemental provisions.

SEC. 802. [Part I, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of nonresidents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. Part IV shall apply to the estates both of citizens or residents of the United States and nonresidents not citizens of the United States.

SCOPE OF REGULATIONS

SECTION 81.1 Scope of regulations.—These regulations relate and shall apply only to estate taxes imposed by chapter 3 of the Internal Revenue Code (53 Stat., Part 1) on the estates of decedents dying after February 10, 1939, the date of the enactment of the Code. They do not supersede or otherwise affect estate tax regulations (including Treasury decisions) applicable under any provision of law in effect prior to February 11, 1939. Such prior regulations remain in full force and effect and continue to apply to estate taxes on the estates of decedents dying prior to February 11, 1939.

Each section, subsection, or paragraph of the Internal Revenue Code set forth in these regulations shall be considered as a part of the respective regulations sections to which it corresponds.*

DEFINITION OF TERMS

SEC. 930. [Part IV, Subchapter A.] "EXECUTOR," "NET ESTATE," "MONTH," "COLLECTOR."

When used in this subchapter—

(a) The term "executor" means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent;

(b) The term "net estate" means the net estate as determined under the provisions of section 812 or 861;

(c) The term "month" means calendar month; and

(d) The term "collector" means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner.

RATES OF TAX

(Basic Estate Tax—Estates of Citizens or Residents of the United States)

SEC. 810. [Part II, Subchapter A.] RATE OF TAX.

A tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 812) shall be imposed upon the transfer of the net estate of every decedent, citizen or resident of the United States, dying after the date of the enactment of this title.

1 per centum of the amount of the net estate not in excess of \$50,000;

2 per centum of the amount by which the net estate exceeds \$50,000 and does not exceed \$100,000;

3 per centum of the amount by which the net estate exceeds \$100,000 and does not exceed \$200,000;

4 per centum of the amount by which the net estate exceeds \$200,000 and does not exceed \$400,000;

5 per centum of the amount by which the net estate exceeds \$400,000 and does not exceed \$600,000;

6 per centum of the amount by which the net estate exceeds \$600,000 and does not exceed \$800,000;

7 per centum of the amount by which the net estate exceeds \$800,000 and does not exceed \$1,000,000;

8 per centum of the amount by which the net estate exceeds \$1,000,000 and does not exceed \$1,500,000;

9 per centum of the amount by which the net estate exceeds \$1,500,000 and does not exceed \$2,000,000;

10 per centum of the amount by which the net estate exceeds \$2,000,000 and does not exceed \$2,500,000;

11 per centum of the amount by which the net estate exceeds \$2,500,000 and does not exceed \$3,000,000;

12 per centum of the amount by which the net estate exceeds \$3,000,000 and does not exceed \$3,500,000;

13 per centum of the amount by which the net estate exceeds \$3,500,000 and does not exceed \$4,000,000;

14 per centum of the amount by which the net estate exceeds \$4,000,000 and does not exceed \$5,000,000;

15 per centum of the amount by which the net estate exceeds \$5,000,000 and does not exceed \$6,000,000;

16 per centum of the amount by which the net estate exceeds \$6,000,000 and does not exceed \$7,000,000;

17 per centum of the amount by which the net estate exceeds \$7,000,000 and does not exceed \$8,000,000;

18 per centum of the amount by which the net estate exceeds \$8,000,000 and does not exceed \$9,000,000;

19 per centum of the amount by which the net estate exceeds \$9,000,000 and does not exceed \$10,000,000;

20 per centum of the amount by which the net estate exceeds \$10,000,000.

(Basic Estate Tax—Estates of Nonresidents not Citizens of the United States)

SEC. 860. [Part III, Subchapter A.] RATE OF TAX.

A tax equal to the sum of the percentages set forth in section 810 of the value of the net estate (determined as provided in section 861) shall be imposed upon the transfer of the net estate of every decedent nonresident not a citizen of the United States dying after the date of the enactment of this title.

(Additional Estate Tax—Estates of Citizens or Residents of the United States and Nonresidents not Citizens of the United States)

SEC. 935. [Subchapter B.] RATE OF TAX.

(a) In addition to the estate tax imposed by section 810 or 860, there shall be imposed upon the transfer of the net estate of every decedent dying after the date of the enactment of this title, whether a citizen or resident of the United States or a nonresident not a citizen of the United States, a tax equal to the excess of—

(1) the amount of a tentative tax computed under subsection (b) of this section, over

(2) the amount of the tax imposed by section 810, in the case of a citizen or resident of the United States, or 860, in the case of a nonresident not a citizen of the United States, computed without regard to the provisions of this subchapter.

(b) (As amended by section 401(a) of the Revenue Act of 1941; effective September 21, 1941.) The tentative tax referred to in subsection (a) (1) of this section shall be the tentative tax shown in the following table:

If the net estate is:	The tentative tax shall be:
Not over \$5,000-----	3% of the net estate.
Over \$5,000 but not over \$10,000.	\$150, plus 7% of excess over \$5,000.
Over \$10,000 but not over \$20,000.	\$500, plus 11% of excess over \$10,000.

Over \$20,000 but not over \$30,000.	\$1,600, plus 14% of excess over \$20,000.
Over \$30,000 but not over \$40,000.	\$3,000, plus 18% of excess over \$30,000.
Over \$40,000 but not over \$50,000.	\$4,800, plus 22% of excess over \$40,000.
Over \$50,000 but not over \$60,000.	\$7,000, plus 25% of excess over \$50,000.
Over \$60,000 but not over \$100,000.	\$9,500, plus 28% of excess over \$60,000.
Over \$100,000 but not over \$250,000.	\$20,700, plus 30% of excess over \$100,000.
Over \$250,000 but not over \$500,000.	\$65,700, plus 32% of excess over \$250,000.
Over \$500,000 but not over \$750,000.	\$145,700, plus 35% of excess over \$500,000.
Over \$750,000 but not over \$1,000,000.	\$233,200, plus 37% of excess over \$750,000.
Over \$1,000,000 but not over \$1,250,000.	\$325,700, plus 39% of excess over \$1,000,000.
Over \$1,250,000 but not over \$1,500,000.	\$423,200, plus 42% of excess over \$1,250,000.
Over \$1,500,000 but not over \$2,000,000.	\$528,200, plus 45% of excess over \$1,500,000.
Over \$2,000,000 but not over \$2,500,000.	\$753,200, plus 49% of excess over \$2,000,000.
Over \$2,500,000 but not over \$3,000,000.	\$998,200, plus 53% of excess over \$2,500,000.
Over \$3,000,000 but not over \$3,500,000.	\$1,263,200, plus 56% of excess over \$3,000,000.
Over \$3,500,000 but not over \$4,000,000.	\$1,543,200, plus 59% of excess over \$3,500,000.
Over \$4,000,000 but not over \$5,000,000.	\$1,838,200, plus 63% of excess over \$4,000,000.
Over \$5,000,000 but not over \$6,000,000.	\$2,468,200, plus 67% of excess over \$5,000,000.
Over \$6,000,000 but not over \$7,000,000.	\$3,138,200, plus 70% of excess over \$6,000,000.
Over \$7,000,000 but not over \$8,000,000.	\$3,838,200, plus 73% of excess over \$7,000,000.
Over \$8,000,000 but not over \$10,000,000.	\$4,568,200, plus 76% of excess over \$8,000,000.
Over \$10,000,000-----	\$6,088,200, plus 77% of excess over \$10,000,000.

(c) For the purposes of this section the value of the net estate shall be determined as provided in subchapter A, except that in lieu of the exemption of \$100,000 provided in section 812(a), the exemption shall be \$40,000.

SEC. 935. (b) (As enacted on February 10, 1939.) The tentative tax referred to in subsection (a) (1) of this section shall equal the sum of the following percentages of the value of the net estate:

Upon net estates not in excess of \$10,000, 2 per centum.

\$200 upon net estates of \$10,000; and upon net estates in excess of \$10,000 and not in excess of \$20,000, 4 per centum in addition of such excess.

\$600 upon net estates of \$20,000; and upon net estates in excess of \$20,000 and not in excess of \$30,000, 6 per centum in addition of such excess.

\$1,200 upon net estates of \$30,000; and upon net estates in excess of \$30,000 and not in excess of \$40,000, 8 per centum in addition of such excess.

\$2,000 upon net estates of \$40,000; and upon net estates in excess of \$40,000 and not in excess of \$50,000, 10 per centum in addition of such excess.

\$3,000 upon net estates of \$50,000; and upon net estates in excess of \$50,000 and not in excess of \$70,000, 12 per centum in addition of such excess.

\$5,400 upon net estates of \$70,000; and upon net estates in excess of \$70,000 and not in excess of \$100,000, 14 per centum in addition of such excess.

\$9,600 upon net estates of \$100,000; and upon net estates in excess of \$100,000 and not in excess of \$200,000, 17 per centum in addition of such excess.

\$26,600 upon net estates of \$200,000; and upon net estates in excess of \$200,000 and not in excess of \$400,000, 20 per centum in addition of such excess.

\$66,600 upon net estates of \$400,000; and upon net estates in excess of \$400,000 and not in excess of \$600,000, 23 per centum in addition of such excess.

\$112,600 upon net estates of \$600,000; and upon net estates in excess of \$600,000 and not in excess of \$800,000, 26 per centum in addition of such excess.

\$164,600 upon net estates of \$800,000; and upon net estates in excess of \$800,000 and not in excess of \$1,000,000, 29 per centum in addition of such excess.

\$222,600 upon net estates of \$1,000,000; and upon net estates in excess of \$1,000,000 and not in excess of \$1,500,000, 32 per centum in addition of such excess.

\$382,600 upon net estates of \$1,500,000; and upon net estates in excess of \$1,500,000 and not in excess of \$2,000,000, 35 per centum in addition of such excess.

\$557,600 upon net estates of \$2,000,000; and upon net estates in excess of \$2,000,000 and not in excess of \$2,500,000, 38 per centum in addition of such excess.

\$747,600 upon net estates of \$2,500,000; and upon net estates in excess of \$2,500,000 and not in excess of \$3,000,000, 41 per centum in addition of such excess.

\$952,600 upon net estates of \$3,000,000; and upon net estates in excess of \$3,000,000 and not in excess of \$3,500,000, 44 per centum in addition of such excess.

\$1,172,600 upon net estates of \$3,500,000; and upon net estates in excess of \$3,500,000 and not in excess of \$4,000,000, 47 per centum in addition of such excess.

\$1,407,600 upon net estates of \$4,000,000; and upon net estates in excess of \$4,000,000 and not in excess of \$4,500,000, 50 per centum in addition of such excess.

\$1,657,600 upon net estates of \$4,500,000; and upon net estates in excess of \$4,500,000 and not in excess of \$5,000,000, 53 per centum in addition of such excess.

\$1,922,600 upon net estates of \$5,000,000; and upon net estates in excess of \$5,000,000 and not in excess of \$6,000,000, 56 per centum in addition of such excess.

\$2,482,600 upon net estates of \$6,000,000; and upon net estates in excess of \$6,000,000 and not in excess of \$7,000,000, 59 per centum in addition of such excess.

\$3,072,600 upon net estates of \$7,000,000; and upon net estates in excess of \$7,000,000 and not in excess of \$8,000,000, 61 per centum in addition of such excess.

\$3,682,600 upon net estates of \$8,000,000; and upon net estates in excess of \$8,000,000 and not in excess of \$9,000,000, 63 per centum in addition of such excess.

\$4,312,600 upon net estates of \$9,000,000; and upon net estates in excess of \$9,000,000 and not in excess of \$10,000,000, 65 per centum in addition of such excess.

\$4,962,600 upon net estates of \$10,000,000; and upon net estates in excess of \$10,000,000 and not in excess of \$20,000,000, 67 per centum in addition of such excess.

\$11,662,600 upon net estates of \$20,000,000; and upon net estates in excess of \$20,000,000 and not in excess of \$50,000,000, 69 per centum in addition of such excess.

\$32,362,600 upon net estates of \$50,000,000; and upon net estates in excess of \$50,000,000, 70 per centum in addition of such excess.

(Defense Tax; effective after June 25, 1940, and before September 21, 1941)

SEC. 951. [Subchapter C, as added by section 206 of the Revenue Act of 1940.] **DEFENSE TAX.**

In the case of a decedent dying after the date of the enactment of the Revenue Act of 1940 and before the expiration of five years after such date, the total amount of tax payable under this chapter shall be 10 per centum greater than the amount of tax which would be payable if computed without regard to this section. For the purposes of this section, the tax computed without regard to this section shall be such tax after the application of the credits provided for in section 813 and section 936.

SEC. 401. (b) [Revenue Act of 1941.] **DEFENSE TAX REPEALED.**—

Subchapter C of Chapter 3 of the Internal Revenue Code is repealed.

SEC. 401. (c) [Revenue Act of 1941; enacted September 20, 1941.] **EFFECTIVE DATE.**—

Subsections (a) and (b) shall be effective only with respect to estates of decedents dying after the date of the enactment of this Act.

DESCRIPTION OF THE TAX

SEC. 81.2 **General description.**—Federal estate taxation under the Internal Revenue Code (chapter 3), applicable to estates of decedents dying on or after February 11, 1939, consists of, *first*, the basic tax, *second*, the additional tax, and, *third*, if the decedent died after

June 25, 1940, and before September 21, 1941, the defense tax. Prior estate tax statutes are applicable to the estates of decedents who died before February 11, 1939.

The basic estate tax is imposed under subchapter A (Part II, section 810, estates of citizens or residents of the United States, and Part III, section 860, estates of nonresidents not citizens of the United States). The additional estate tax is imposed under subchapter B (section 935). The defense tax, imposed under subchapter C (section 951), as added by the Revenue Act of 1940 and repealed by the Revenue Act of 1941, is applicable to estates of decedents who died after June 25, 1940, and before September 21, 1941.

A credit is authorized against the basic estate tax (not in excess of 80 per cent thereof) for estate, inheritance, legacy, or succession taxes paid a State, Territory, or the District of Columbia (or, if the decedent died after June 29, 1939, a possession of the United States). A specific exemption of \$100,000 is authorized for the purpose of the basic estate tax in the case of a resident or citizen of the United States.

No credit is allowable against the additional estate tax for estate, inheritance, legacy, or succession taxes paid a State, Territory, the District of Columbia, or any possession of the United States. A specific exemption of \$40,000 is authorized for the purpose of the additional estate tax in the case of a resident or citizen of the United States.

Credits for Federal gift taxes are, under certain conditions and limitations, allowable against both the basic and the additional estate taxes. No specific exemption is authorized if the decedent was a nonresident not a citizen of the United States.

The Federal estate tax is neither a property nor an inheritance tax. It is imposed upon the transfer of the entire net estate and not upon any particular legacy, devise, or distributive share. The relationship of the beneficiary to the decedent has no bearing on the question of liability or the extent thereof. The transfer of property is taxable although it escheats to the State for lack of heirs.*

SEC. 81.3 Gross estate.—In addition to the general provisions of subsection (a) of section 811 requiring the inclusion in the gross estate of property (except real property situated outside the United States) to the extent of the interest therein of the decedent, other subsections of section 811 more specifically include in the gross estate for the purpose of the estate tax, as more fully explained hereafter in these regulations, certain transfers made during the decedent's life without an adequate and full consideration in money or money's worth, joint estates with right of survivorship, tenancies by the entirety, life insurance even though payable to beneficiaries other than the estate, property over which the decedent exercised a general power of ap-

pointment, and dower or curtesy of the surviving spouse or statutory estate in lieu thereof.*

SEC. 81.4 Net estate.—The term “net estate” has a distinct meaning in the statute, signifying the difference between the total value of the gross estate and the total amount of the authorized deductions. There is no basis for tax if the value of the gross estate does not exceed the total amount of the authorized deductions, but whether taxable or not, a return must be filed for every estate, unless in the case of a resident or citizen the value of the gross estate at the date of death does not exceed the specific exemption of \$40,000.*

SEC. 81.5 Definition of “resident” and “nonresident.”—A resident is one who, at the time of his death, had his domicile in the United States; or one who was a citizen of the United States at the time of death and with respect to whose property any probate or administration proceedings are had in the United States Court for China. (See section 851.) A missionary who, at the time of death, was serving as such under a foreign missionary board of any religious denomination in the United States, will be presumed to have died a resident of the United States, if domiciled therein at the time of his or her commission and departure for such service, and not a nonresident merely by reason of his or her intention to remain permanently in such service. (See section 850.)

All persons not residents of the United States as above defined, or to whom the presumption just stated does not apply, are non-residents.

Section 3797(a)(9) of the Internal Revenue Code provides that (where not otherwise distinctly expressed or manifestly incompatible with the intent thereof) the term “United States” when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

A citizen of the United States is a nonresident if his domicile is in Puerto Rico, the Philippine Islands, or otherwise outside the United States as defined in section 3797(a)(9), whereas a subject or citizen of a foreign country is a resident if his domicile is in the United States; i. e., in any of the States, the Territory of Alaska or Hawaii, or the District of Columbia. A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal.

Different provisions control the determination of the tax liability of the estates of citizens or residents of the United States and the estates of nonresidents not citizens of the United States.*

DETERMINATION OF TAX LIABILITY

SEC. 81.6 Manner of determining liability.—The first step in the determination of tax liability is to ascertain the total value of the decedent's gross estate. (See sections 81.10 to 81.28, inclusive; also section 81.49.) The second step is to determine the total amount of the deductions authorized and to subtract such total from the value of the gross estate in order to arrive at the value of the net estate. (See sections 81.29 to 81.48, inclusive, and sections 81.50 to 81.55, inclusive.) The third step is to compute the tax and any allowable credits. (See sections 81.7, 81.8, and 81.9.)

If the decedent was a resident or citizen of the United States, a net estate computed with a specific exemption of \$100,000 must be determined for the purpose of the basic estate tax, and another net estate computed with a specific exemption of \$40,000 must be determined for the purpose of the additional estate tax.*

SEC. 81.7 Rates and computation of tax.—Both the basic estate tax and the additional estate tax are computed in accordance with progressively graduated rates. The basic tax schedule provides rates from 1 per cent on the first \$50,000 to 20 per cent on any amount in excess of \$10,000,000. The additional tax schedule applicable to estates of decedents dying after September 20, 1941, provides rates from 3 per cent on the first \$5,000 to 77 per cent on any amount in excess of \$10,000,000. The additional tax schedule applicable to estates of decedents dying on or before September 20, 1941, provides rates from 2 per cent on the first \$10,000 to 70 per cent on any amount in excess of \$50,000,000.

The gross basic tax is computed, in accordance with the basic tax schedule, on the value of the net estate determined for the purpose of the basic tax. The gross additional tax is ascertained by subtracting the gross basic tax from an amount computed, in accordance with the additional tax schedule applicable, on the value of the net estate determined for the purpose of the additional tax. In the case of a resident or citizen of the United States, the value of the net estate determined for the purpose of the basic tax differs from the value of the net estate determined for the purpose of the additional tax, since for the former a specific exemption of \$100,000 is authorized while for the latter the amount of the specific exemption is \$40,000.

The net basic tax is obtained by subtracting any authorized credits for gift, estate, and inheritance taxes from the amount of the gross basic tax. The net additional tax is obtained by subtracting any further authorized credit for gift tax from the amount of the gross additional tax. The total estate tax payable is the sum of the net basic tax and the net additional tax, unless the decedent died after June 25, 1940, and before September 21, 1941. The defense tax,

applicable if the decedent died after June 25, 1940, and before September 21, 1941, is obtained by computing 10 per cent of the total of the net basic and net additional taxes. If the decedent died within such period, the sum of the net basic and net additional taxes, plus the defense tax, is the total estate tax payable.

There is provided below a table for the computation of the estate tax imposed by the provisions of the Code, together with an explanation thereof:

TABLE FOR COMPUTATION OF ESTATE TAX

(A) Net estate equaling—	(B) Net estate not exceeding—	(1) For basic estate tax		(2) For additional estate tax (tentative tax— total gross basic and additional taxes). In effect prior to September 21, 1941		(3) For additional estate tax (tentative tax— total gross basic and additional taxes). In effect after Sep- tember 20, 1941	
		Tax on amount in column (A)	Rate of tax on excess over amount in column (A)	Tax on amount in column (A)	Rate of tax on excess over amount in column (A)	Tax on amount in column (A)	Rate of tax on excess over amount in column (A)
			<i>Per cent</i>		<i>Per cent</i>		<i>Per cent</i>
-----	\$5,000	-----	1	-----	2	-----	3
\$5,000	10,000	\$50	1	\$100	2	\$150	7
10,000	20,000	100	1	200	4	500	11
20,000	30,000	200	1	600	6	1,600	14
30,000	40,000	300	1	1,200	8	3,000	18
40,000	50,000	400	1	2,000	10	4,800	22
50,000	60,000	500	2	3,000	12	7,000	25
60,000	70,000	700	2	4,200	12	9,500	28
70,000	100,000	900	2	5,400	14	12,300	28
100,000	200,000	1,500	3	9,600	17	20,700	30
200,000	250,000	4,500	4	26,600	20	50,700	30
250,000	400,000	6,500	4	36,600	20	65,700	32
400,000	500,000	12,500	5	66,600	23	113,700	32
500,000	600,000	17,500	5	89,600	23	145,700	35
600,000	750,000	22,500	8	112,600	26	180,700	35
750,000	800,000	31,500	8	151,600	26	233,200	37
800,000	1,000,000	34,500	7	164,600	29	251,700	37
1,000,000	1,250,000	48,500	8	222,600	32	325,700	39
1,250,000	1,500,000	68,500	8	302,600	32	423,200	42
1,500,000	2,000,000	88,500	9	382,600	35	528,200	45
2,000,000	2,500,000	133,500	10	557,600	38	753,200	49
2,500,000	3,000,000	183,500	11	747,600	41	998,200	53
3,000,000	3,500,000	238,500	12	952,600	44	1,263,200	56
3,500,000	4,000,000	298,500	13	1,172,600	47	1,543,200	59
4,000,000	4,500,000	363,500	14	1,407,600	50	1,838,200	63
4,500,000	5,000,000	433,500	14	1,657,600	53	2,153,200	63
5,000,000	6,000,000	503,500	15	1,922,600	56	2,468,200	67
6,000,000	7,000,000	653,500	16	2,482,600	59	3,138,200	70
7,000,000	8,000,000	813,500	17	3,072,600	61	3,838,200	73
8,000,000	9,000,000	983,500	18	3,682,600	63	4,568,200	76
9,000,000	10,000,000	1,163,500	19	4,312,600	65	5,328,200	76
10,000,000	20,000,000	1,353,500	20	4,962,600	67	6,088,200	77
20,000,000	50,000,000	3,353,500	20	11,662,600	69	13,788,200	77
50,000,000	-----	9,353,500	20	32,362,600	70	36,888,200	77

Column (A) of the table sets forth the net estates of specified amounts to which the taxes shown in the first subcolumn of each of

the numbered columns relate. Column (B) indicates the respective maximum limits to which the rates shown in the second subcolumn of each of the numbered columns are applicable. Column (1) of the table sets forth the gross basic tax upon net estates of specified amounts and the rate for the gross basic tax upon the excess of such amounts. Column (2) of the table sets forth the total gross basic and additional taxes for net estates of specified amounts in the case of decedents dying prior to September 21, 1941, and the rate for the total gross basic and additional taxes upon the excess of such amounts. Column (3) of the table sets forth the total gross basic and additional taxes for net estates of specified amounts in the case of decedents dying on or after September 21, 1941, and the rate for the total gross basic and additional taxes upon the excess of such amounts.

An illustration of the table's use is as follows: The net estate for the basic estate tax amounts to \$1,240,000. By reference to the table it will be seen that the specified amount in column (A) nearest to the value of the decedent's net estate but less than such value is \$1,000,000. The tax upon this amount as indicated in column (1) opposite \$1,000,000 in column (A) is \$48,500. Upon the remainder of the net estate, \$240,000, the tax is computed at the rate of 8 per cent set out in the second subcolumn of column (1) opposite \$1,000,000 in column (A). The tax on this remainder is, consequently, \$19,200. The following result is thus obtained:

Tax on-----	\$1, 000, 000=	\$48, 500
Tax on-----	240, 000=	19, 200
<hr/>		
Total-----	1, 240, 000	67, 700

Example (1) (estate subject to both the basic tax and the additional tax, and involving credit for State inheritance tax). A resident decedent died July 15, 1939, leaving a net estate of the value of \$210,000 after deducting the specific exemption of \$100,000 allowed by section 812(a). The tax shown in the first subcolumn of column (1) of the table on a net estate equaling \$200,000 is \$4,500. As \$210,000 exceeds \$200,000 and falls below \$400,000, the tax on the excess of \$10,000 is computed at the rate of 4 per cent, the rate shown in the second subcolumn of column (1). The \$400 tax on such excess added to \$4,500 gives \$4,900, the gross basic tax computed under section 810. (Credit for gift tax is not involved in this example.) It will be assumed that the maximum amount of credit, \$3,920, or 80 per cent of \$4,900, is allowed for inheritance tax. The net basic tax is the difference between \$4,900 and \$3,920, or \$980. For the purpose of the additional tax, the decedent's net estate after deducting the specific exemption of \$40,000 is \$270,000. The total gross basic and additional taxes shown in the first subcolumn of column (2) on

a net estate equaling \$200,000 is \$26,600. As \$270,000 exceeds \$200,000 and falls below \$400,000, the total gross taxes on the excess of \$70,000 is computed at 20 per cent, the rate shown in the second subcolumn of column (2). The total gross taxes on such excess is, consequently, \$14,000. The \$14,000 added to the \$26,600 gives \$40,600, the total gross basic and additional taxes computed upon the net estate of \$270,000 at the rates set forth under section 935. The difference between the total gross taxes, \$40,600, and the gross basic tax, \$4,900, is \$35,700, the gross additional tax. As in this example no credit for gift tax is involved, the amount of the gross additional tax is the same as the net additional tax. The net basic tax, \$980, added to the net additional tax, \$35,700, results in a total estate tax payable of \$36,680. A tabulation of this example is as follows:

Gross basic tax.....	\$ 4, 900	
Credit for gift tax.....	0	
Gross basic tax, less credit for gift tax.....	4, 900	
Credit for estate or inheritance tax.....	3, 920	
Net basic tax.....		\$980
Total gross taxes (basic and additional taxes).....	40, 600	
Gross basic tax.....	4, 900	
Gross additional tax.....	35, 700	
Credit for gift tax.....	0	
Net additional tax.....		35, 700
Total estate tax payable.....		36, 680

Example (2) (estate subject only to the additional tax imposed by section 935). The gross estate of a resident decedent who died August 1, 1939, amounts to \$85,000. Deductions for administration expenses and claims against the estate are allowed in the amount of \$10,000, leaving \$75,000 before the deduction of the specific exemption authorized by section 812(a). As that exemption is \$100,000, it is apparent that the estate is not subject to the basic tax under section 810. However, as the specific exemption authorized by subsection (c) of section 935 is only \$40,000, the estate is subject to the additional tax imposed by that section. For the purpose of such additional tax the net estate amounts to \$35,000. The tax shown in the first subcolumn of column (2) of the table on a net estate of \$30,000 is \$1,200. As \$35,000 exceeds \$30,000 and falls below \$40,000, the tax on the excess of \$5,000 is computed at 8 per cent, the rate shown in the second subcolumn of column (2). The tax on such excess is, consequently, \$400. The \$400 added to the \$1,200 gives \$1,600, the tax computed

upon the net estate of \$35,000 at the rates prescribed by section 935. Inasmuch as, in this example, the estate is not subject under section 810 to the basic tax, \$1,600 is the gross additional tax under section 935. As credit for gift tax is not involved in this example, the gross additional tax is the same as the net additional tax. It will be noted that credit for estate or inheritance taxes is not allowable against the additional tax imposed by section 935.

Example (3) (estate subject to both the basic tax and the additional tax, and involving credits for State inheritance tax and for gift tax). The value of the gross estate of a resident decedent who died April 15, 1940, is \$400,000 and the value of the net estate for the purpose of the basic tax is \$225,000. The gross basic tax computed on that net estate is \$5,500. (See illustration for use of table in computing the tax.) On January 15, 1940, the decedent, in contemplation of death, transferred certain real estate to his daughter as a gift. The value of the real estate as of the date of the gift, and as of the time of death, was \$144,000. As the result of this gift, a gift tax was paid in the amount of \$7,200 on a net gift of \$100,000 after deducting an exclusion of \$4,000 and the \$40,000 specific exemption allowed by provisions of the gift tax chapter. As the value of the transferred real estate is included in the decedent's gross estate, a credit for gift tax is allowed against the gross basic tax in such amount as does not exceed an amount which bears the same ratio to the gross basic tax, \$5,500, as the value at which the taxable gift (\$144,000 less the gift tax exclusion of \$4,000) is included in the gross estate bears to the value of the entire gross estate. (See section 81.8.) This ratio, which is ascertained by dividing \$140,000 by \$400,000, is 0.35. The credit for gift tax is, therefore, allowed in the amount which results from multiplying \$5,500 by 0.35, or \$1,925. The gross basic tax \$5,500, less the credit for gift tax, is \$3,575. It will be assumed that State inheritance taxes paid equal or exceed the maximum amount of the credit allowable therefor (80 per cent of the difference between the gross basic tax and the gift tax credit). Accordingly, \$2,860 is allowed as the credit for State inheritance taxes. The difference between \$3,575 and \$2,860 is \$715, which is the net basic tax.

The net estate for the purpose of the additional tax is \$285,000. The total gross basic and additional taxes computed in accordance with the table are \$43,600. The difference between such total gross taxes and \$5,500, the gross basic tax, is \$38,100, the gross additional tax. The credit for gift tax against such gross additional tax (1) cannot exceed an amount which bears the same ratio to the gross additional tax as the value at which the taxable gift is included in the gross estate bears to the value of the entire gross estate (\$38,100, the gross additional tax, multiplied by 0.35 equals \$13,335), and (2) cannot

exceed the difference between the total amount of the gift tax paid and the credit for gift tax allowed against the gross basic tax. The credit here allowed is \$7,200 less \$1,925, or \$5,275. A tabulation of this example is as follows:

Gross basic tax	\$5, 500	
Credit for gift tax	1, 925	
Gross basic tax, less gift tax credit	3, 575	
Credit for estate or inheritance tax	2, 860	
Net basic tax		\$715
Total gross taxes (basic and additional taxes)	43, 600	
Gross basic tax	5, 500	
Gross additional tax	38, 100	
Credit for gift tax	5, 275	
Net additional tax		32, 825
Total estate tax payable (net basic and additional taxes)		33, 540

Example (4) (estate subject to the basic tax, the additional tax, and the defense tax, and involving credits for State inheritance tax and for gift tax). Assume the same facts stated in example (3) except that the date of the decedent's death is July 15, 1940. To the total net basic and additional taxes of \$33,540 is added the defense tax of 10 per cent thereof, \$3,354, resulting in a total estate tax payable of \$36,894.

If the decedent died after September 20, 1941, the date of the enactment of the Revenue Act of 1941, column (3) instead of column (2) of the table must be used in computing the total gross basic and additional taxes, and the defense tax is not applicable to such an estate.*

CREDITS AGAINST ESTATE TAX

(GIFT TAX CREDIT)

(CREDIT AGAINST BASIC TAX)

SEC. 813. [Part II, Subchapter A.] CREDITS AGAINST TAX.

(a) GIFT TAX.—

(1) REVENUE ACT OF 1924.—In case a tax has been imposed under section 319 of the Revenue Act of 1924, 43 Stat. 313, as amended by section 324 of the Revenue Act of 1926, 44 Stat. 86, upon any gift, and thereafter upon the death of the donor the amount thereof is required by any provision of this subchapter to be included in the gross estate of the decedent then there shall be credited against and applied in reduction of the estate tax, which would otherwise be chargeable against the estate of the decedent under the provisions of this subchapter, an amount equal

to the tax paid with respect to such gift; and in the event the donor has in any year paid the tax imposed by said section 319 with respect to a gift or gifts which upon the death of the donor must be included in his gross estate and a gift or gifts not required to be so included, then the amount of the tax which shall be deemed to have been paid with respect to the gift or gifts required to be so included shall be that proportion of the entire tax paid on account of all such gifts which the amount of the gift or gifts required to be so included bears to the total amount of gifts in that year.

(2) (As amended by Joint Resolution, approved March 17, 1941, Public Law 18, Seventy-seventh Congress, effective as of February 11, 1939.) REVENUE ACT OF 1932 OR CHAPTER 4.—

(A) If a tax has been paid under chapter 4 or under Title III of the Revenue Act of 1932, 47 Stat. 245, on a gift, and thereafter upon the death of the donor any amount in respect of such gift is required to be included in the value of the gross estate of the decedent for the purposes of this subchapter, then there shall be credited against the tax imposed by section 810 or 860 the amount of the tax paid under chapter 4 or under Title III of the Revenue Act of 1932 with respect to so much of the property which constituted the gift as is included in the gross estate, except that the amount of such credit shall not exceed an amount which bears the same ratio to the tax imposed by section 810 or 860 as the value (at the time of the gift or at the time of the death, whichever is lower) of so much of the property which constituted the gift as is included in the gross estate, bears to the value of the entire gross estate.

(B) For the purposes of paragraph (A), the amount of tax paid for any year under chapter 4 or under Title III of the Revenue Act of 1932 with respect to any property shall be an amount which bears the same ratio to the total tax paid for such year as the value of such property bears to the total amount of net gifts (computed without deduction of the specific exemption) for such year.

(CREDIT AGAINST ADDITIONAL TAX)

SEC. 936. [Subchapter B.] CREDITS AGAINST TAX.

* * * * *

(b) (as amended by Joint Resolution, approved March 17, 1941, Public Law 18, Seventy-seventh Congress, effective as of February 11, 1939) (1) If a tax has been paid under chapter 4 or under Title III of the Revenue Act of 1932, 47 Stat. 245, on a gift, and thereafter upon the death of the donor any amount in respect of such gift is required to be included in the value of the gross estate of the decedent for the purposes of this subchapter, then there shall be credited against the tax imposed by section 935 the amount of the tax paid under chapter 4 or under Title III of the Revenue Act of 1932 with respect to so much of the property which constituted the gift as is included in the gross estate, except that the amount of such credit (A) shall not exceed an amount which bears the same ratio to the tax imposed by section 935 as the value (at the time of the gift or at the time of the death, whichever is lower) of so much of the

property which constituted the gift as is included in the gross estate, bears to the value of the entire gross estate, and (B) shall not exceed the amount by which the gift tax paid under chapter 4 or under Title III of the Revenue Act of 1932 with respect to so much of the property as constituted the gift as is included in the gross estate, exceeds the amount of the credit under section 813(a) (2).

(2) For the purposes of paragraph (1), the amount of tax paid for any year under chapter 4 or under Title III of the Revenue Act of 1932 with respect to any property shall be an amount which bears the same ratio to the total tax paid for such year as the value of such property bears to the total amount of net gifts (computed without deduction of the specific exemption) for such year.

(INHERITANCE TAX CREDIT)

SEC. 813. [Part II, Subchapter A.] CREDITS AGAINST TAX.

* * * * *

(b) (as amended by section 403 of the Revenue Act of 1939, effective as of June 30, 1939, and by Joint Resolution, approved March 17, 1941, Public Law 18, Seventy-seventh Congress, effective as of February 11, 1939) ESTATE, SUCCESSION, LEGACY, AND INHERITANCE TAXES.—The tax imposed by section 810 or 860 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia or any possession of the United States, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent). The credit allowed by this subsection shall not exceed 80 per centum of the tax imposed by section 810 or 860 (after deducting from such tax the credits provided by section 813(a) (2)), and shall include only such taxes as were actually paid and credit therefor claimed within four years after the filing of the return required by section 821 or 864, except that—

(1) If a petition for redetermination of a deficiency has been filed with the Board of Tax Appeals within the time prescribed in section 871, then within such four-year period or before the expiration of 60 days after the decision of the Board becomes final.

(2) If, under section 822(a) (2) or section 871(h), an extension of time has been granted for payment of the tax shown on the return, or of a deficiency, then within such four-year period or before the date of the expiration of the period of the extension.

Refund based on the credit may (despite the provisions of sections 910 to 912, inclusive), be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest.

SEC. 936. [Subchapter B.] CREDITS AGAINST TAX.

(a) The credit provided in section 813(b) (80 per centum credit), shall not be allowed in respect of such additional tax.

SEC. 802. [Part I, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of non-residents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. * * *

SEC. 813. [Part II, Subchapter A.] CREDITS AGAINST TAX.

* * * * *

(b) (as originally enacted) ESTATE, SUCCESSION, LEGACY, AND INHERITANCE TAXES.—The tax imposed by section 810 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent). The credit allowed by this subsection shall not exceed 80 per centum of the tax imposed by section 810 (after deducting from such tax the credits provided by section 813(a)(2)), and shall include only such taxes as were actually paid and credit therefor claimed within four years after the filing of the return required by section 821 or 864, except that—

* * * * *

SEC. 403. Revenue Act of 1939. CREDITS AGAINST ESTATE TAX OF TAX PAID TO POSSESSIONS.

(a) Section 813(b) of the Internal Revenue Code (relating to the 80 per centum credit for estate, legacy, succession, and inheritance taxes paid) is amended by inserting after "District of Columbia," the following: "or any possession of the United States,".

(b) The amendment made by subsection (a) shall be applicable only with respect to estates of decedents dying after the date of the enactment of this Act.

SEC. 81.8 Credit for gift tax.—The estate is entitled, with certain limitations, to credit against the estate tax for Federal gift tax paid in respect of property included in the gross estate.

(a) *Credit against the basic tax imposed by section 810 or section 860.*—Credit against the basic tax as authorized by section 813(a)(2) for Federal gift tax paid on gifts made by the decedent cannot exceed an amount which bears the same ratio to the gross basic tax as the value of the property which was included for the purpose of the gift tax and also included in the gross estate bears to the value of the entire gross estate. In computing this ratio, the value of such property is the value determined for the purpose of the gift tax or the value determined for the purpose of the estate tax, whichever is the lower. In accordance with section 813(a)(1) of the Internal Revenue Code, credit for the entire amount of gift tax paid under the Revenue Act of 1924 in respect of property included in the gross estate is allowed against the basic tax.

(b) *Credit against the additional tax imposed by section 935.*—Credit against the additional tax as authorized by section 936 for Federal gift tax paid on gifts made by the decedent cannot exceed an amount which bears the same ratio to the gross additional tax as the value of the property which was included for the purpose of the gift tax and also included in the gross estate bears to the value of the entire gross estate. In computing this ratio, the

value of such property is the value determined for the purpose of the gift tax or the value determined for the purpose of the estate tax, whichever is the lower. Furthermore, the credit cannot exceed the difference between the total amount of such gift tax paid and the amount of the credit therefor against the gross basic tax imposed by section 810 or section 860. No credit for gift tax paid under the Revenue Act of 1924 is allowed against the additional tax imposed by section 935.

Property included for the purpose of the gift tax and also included in the gross estate does not embrace any portion of the gift excluded under the provisions of the statute imposing the gift tax, and due allowance must be made for any such exclusions when computing the credit in accordance with the limitations set forth in the foregoing paragraphs (a) and (b). For example: A donor, in contemplation of death, transferred property valued at \$100,000 to his five children subsequent to the effective date of the gift tax imposed by chapter 4 of the Internal Revenue Code, and paid the resulting tax. The property is thereafter included in his gross estate for the purpose of the estate tax imposed by the Internal Revenue Code at a value of \$90,000. As the total value of the property at the time of the gift was \$100,000 and the amount of \$20,000 was excluded under the provisions of section 1003(b)(2), the amount of \$80,000, or four-fifths of the property, was included for the purpose of the gift tax. As the total value of the property determined for the purpose of the estate tax is \$90,000, the value of four-fifths thereof is \$72,000. Since \$72,000 is the lower of the two values (\$80,000 and \$72,000), this amount is used in computing the ratio.

If only a part of the property, included for the purpose of a gift tax imposed upon transfers made during a certain calendar year, is also included in the decedent's gross estate for the purpose of the estate tax, the gift tax paid in respect of such a part of the property is an amount which bears the same ratio to the total gift tax paid for such calendar year as the value of such part of the property bears to the total amount of the net gifts (computed without deduction of the specific exemption) for such year. For the purpose of computing this proportion the values finally determined for the purpose of the gift tax will control, irrespective of the values determined for the purpose of the estate tax.

If all of the property, included for the purpose of a gift tax imposed upon transfers made during a certain calendar year, is included in the decedent's gross estate for the purpose of the estate tax, the gift tax paid in respect of the property included in the gross estate is the amount of the gift tax paid for that calendar year.

Example. On May 15, 1940, a resident donor gave to his son personal property valued at \$52,000, donated cash of \$50,000 to a char-

itable organization, and, in contemplation of death, transferred to his wife real property valued at \$100,000. The total amount of gifts for the year for the purpose of the gift tax was \$190,000, the amount of \$4,000 for each of the three donees being excluded from the total gifts under the provisions of chapter 4 of the Internal Revenue Code. After deducting \$40,000 specific exemption and \$46,000 for the gift to the charitable organization, the net gifts amounted to \$104,000. The gift tax of \$7,710 on the net gifts was paid. The donor later died and the value of the real property transferred in contemplation of death was included in his gross estate for the purpose of the estate tax. The gift tax paid in respect of the property included in the gross estate is an amount which bears the same ratio to \$7,710 as \$96,000 bears to \$144,000, or \$5,140. Note that \$96,000 is the portion of the real property subject to gift tax (\$100,000 less the excluded \$4,000) and that \$144,000 is the amount of the net gifts computed without deduction of the specific exemption, \$40,000.

The credit is allowable even though the gift tax is paid by the executor after the decedent's death and the amount of the gift tax is deductible from the gross estate as a debt of the decedent.

For a further illustration of the computation of gift tax credit, see example (3) in section 81.7.*

SEC. 81.9 Credit for estate, inheritance, legacy, or succession taxes.— Under certain conditions a credit is authorized against the basic Federal estate tax for estate, inheritance, legacy, or succession taxes actually paid with respect to the estate of the decedent to any State or Territory or the District of Columbia. If the decedent died after June 29, 1939, the credit against the basic Federal estate tax, is, under the same conditions, authorized by section 813(b) of the Internal Revenue Code, as amended by section 403 of the Revenue Act of 1939, for estate, inheritance, legacy, or succession taxes paid to any State or Territory, the District of Columbia, or any possession of the United States. The credit is limited to 80 per cent of such Federal estate tax, after deduction of the credit allowed, if any, against such tax for Federal gift taxes paid. No credit for payment of estate, inheritance, legacy, or succession taxes is allowed against the additional estate tax imposed by section 935. The credit is limited to the amount of the estate, inheritance, legacy, or succession taxes paid to any State, Territory, possession of the United States, or the District of Columbia in respect of property included in the gross estate of the decedent for Federal estate tax purposes.

The credit is also limited to such taxes as were actually paid and credit therefor claimed within four years after the filing of the return, required by section 821 or 864 except as otherwise provided in this

paragraph. If a petition was filed with the Board of Tax Appeals for the redetermination of a deficiency within the time prescribed by section 871(a) (see section 81.73), the credit is limited to such taxes as were actually paid and credit therefor claimed within four years after the filing of the return or before the expiration of 60 days after the decision of the Board becomes final, whichever period is the longer. If an extension of time has been granted for payment of the tax shown on the return or of a deficiency under section 822(a)(2) or section 871(h), the credit is limited to such taxes as were actually paid and credit therefor claimed within four years after the filing of the return or before the date of the expiration of the extension, whichever period is the longer. Should the executor, in accordance with the provisions of sections 925 and 926, elect to postpone the payment of the Federal estate tax attributable to a reversionary or remainder interest, the credit allowable against the basic tax attributable to such interest is limited to estate, inheritance, legacy, or succession taxes attributable to such interest as are actually paid to any State or Territory or the District of Columbia (or, if the decedent died after June 29, 1939, to any possession of the United States) and credit therefor claimed prior to the expiration of 60 days after the termination of the precedent interest. (See section 927 of the Internal Revenue Code and section 81.79(b) of these regulations.)

Refund based on the credit, despite the provisions of sections 910, 911, and 912, will be made if claim therefor is filed within the period provided for filing claim for credit. Such refunds will be made without interest.

Before the Commissioner allows any credit for any estate, inheritance, legacy, or succession taxes, there must be submitted to him the following:

(a) Certificate of the proper officer of the taxing State, Territory, District of Columbia, or possession of the United States showing: (1) the total amount of tax imposed (before adding interest and penalties and before allowing discount); (2) the amount of discount allowed; (3) the amount of penalties and interest imposed or charged; (4) the total amount actually paid in cash; and (5) the date of payment.

(b) A certificate of the above-mentioned officer showing whether (1) a claim for refund of such taxes or any part thereof is pending and (2) whether a refund of such taxes or any part thereof has been authorized. If any refund has been made, the date, the amount thereof, and a description of the property or interest in respect to which such refund was made must be shown in the certificate.

The evidence described above should be filed with the return, but if that is not convenient or possible, then it should be submitted as soon thereafter as practicable.

The Commissioner may require the submission of such additional proof as is deemed necessary to establish the right to the credit. For example, he may require an itemized list of the property in respect to which such taxes were imposed by the State, Territory, District of Columbia, or possession of the United States, certified by the officer having custody of the records pertaining to such taxes, and an affidavit of the executor stating whether any litigation has been instituted, or appeal taken, or any such action is designed or contemplated, either by him or, to his knowledge, by any beneficiary or other person, the final determination of which may affect the amount of such taxes.

If, subsequent to the allowance of a credit by the Commissioner, a refund is made of any such estate, inheritance, legacy, or succession taxes, the executor, or if the refund is made after the executor is discharged, then any person or persons to whom the refund is made, is required to advise the Commissioner of the date of the refund and the amount thereof, to furnish the Commissioner with a description of the property or interest in respect of which the refund was made, and to pay the Federal estate tax, if any, due as a result of such refund, together with interest.*

GROSS ESTATE—VALUATION

SEC. 811. [Part II, Subchapter A.] GROSS ESTATE.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

* * * * *

(j) **OPTIONAL VALUATION.**—If the executor so elects upon his return (if filed within the time prescribed by law or prescribed by the Commissioner in pursuance of law), the value of the gross estate shall be determined by valuing all the property included therein on the date of the decedent's death as of the date one year after the decedent's death, except that (1) property included in the gross estate on the date of death and, within one year after the decedent's death, distributed by the executor (or, in the case of property included in the gross estate under subsection (c), (d), or (f) of this section, distributed by the trustee under the instrument of transfer), or sold, exchanged, or otherwise disposed of, shall be included at its value as of the time of such distribution, sale, exchange, or other disposition, whichever first occurs, instead of its value as of the date one year after the decedent's death, and (2) any interest or estate which is affected by mere lapse of time shall be included at its value as of the time of death (instead of the later date) with adjustment for any difference in its value as of the later date not due to mere lapse of time. No deduction under this subchapter of any item shall be allowed if allowance for such item is in effect given by the valuation under this subsection. Wherever in any other subsection or section of this

chapter, reference is made to the value of property at the time of the decedent's death, such reference shall be deemed to refer to the value of such property used in determining the value of the gross estate. In case of an election made by the executor under this subsection, then for the purposes of the deduction under section 812(d) or section 861(a)(3), any bequest, legacy, devise, or transfer enumerated therein shall be valued as of the date of decedent's death with adjustment for any difference in value (not due to mere lapse of time or the occurrence or nonoccurrence of a contingency) of the property as of the date one year after the decedent's death (substituting the date of sale or exchange in the case of property sold or exchanged during such one-year period).

* * * * *

SEC. 802. [Part I, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of non-residents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. * * *

SEC. 81.10 Valuation of property.—(a) *General.*—The value of every item of property includible in the gross estate is the fair market value thereof at the time of the decedent's death; or, if the executor elects in accordance with the provisions of section 81.11, it is the fair market value thereof at the date therein prescribed or such value adjusted as therein set forth. The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. The fair market value of a particular kind of property includible in the gross estate is not to be determined by a forced sale price. Such value is to be determined by ascertaining as a basis the fair market value as of the applicable valuation date of each unit of the property. For example, in the case of shares of stock or bonds, such unit of property is a share or a bond. All relevant facts and elements of value as of the applicable valuation date should be considered in every case.

(b) *Real estate.*—The property should not be returned at the local assessed value thereof unless such value represents the fair market value as of the applicable valuation date. (See section 81.12 for the manner of listing and describing real estate.)

(c) *Stocks and bonds.*—The value of stocks and bonds, within the meaning of the Internal Revenue Code, is the fair market value per share or bond on the applicable valuation date.

In the case of stocks and bonds listed on a stock exchange the mean between the highest and lowest quoted selling prices on the valuation date shall be considered as the fair market value per share or bond. If there were no sales on the valuation date, such value shall be determined by taking the mean between the highest and

lowest sales on the nearest date before and the nearest date after the valuation date (both such nearest dates being within a reasonable period), and by prorating the difference between such mean prices to the valuation date, and by adding or subtracting, as the case may be, such prorated portion of the difference to or from the mean price obtaining on such nearest date before the valuation date. For example, assume that sales of stock nearest the valuation date (June 15) occurred two days before (June 13) and three days after (June 18) and that on such days the mean sale prices per share were \$10 and \$15, respectively. The price of \$12 shall be taken as representing the fair market value of a share of such stock as of the valuation date. If, however, on June 13 and June 18 the mean sale prices per share were \$15 and \$10, respectively, the price of \$13 shall be taken as representing the fair market value of a share of such stock as of the valuation date. If the security was listed on more than one exchange, the records of the exchange where the security is principally dealt in should be employed. In valuing listed stocks and bonds the executor should observe care to consult accurate records to obtain values as of the applicable valuation date.

In the case of stocks and bonds which are not listed upon an exchange, but are dealt in through brokers, or have a market, the fair market value shall be determined by taking the mean between the highest and lowest selling prices as of the valuation date; or, if there were no sales on that date, such value shall be determined by taking the mean between the highest and lowest sales on the nearest date before and the nearest date after the valuation date (both such nearest dates being within a reasonable period), and by prorating the difference between such mean prices to the valuation date, and by adding or subtracting, as the case may be, such prorated portion of the difference to or from the mean price obtaining on such nearest date before the valuation date. If quotations are obtained from brokers, or evidence as to the sale of securities is obtained from the officers of the issuing companies, the executor should preserve in his files the letters furnishing such quotations or evidence of sale for inspection when the return is verified by an investigating officer.

If actual sales are not available during a reasonable period beginning before and ending after the valuation date, the fair market value may be determined by taking the mean between the bona fide bid and asked prices on the nearest date before and the nearest date after the valuation date (both such nearest dates being within a reasonable period), and by prorating the difference between such mean prices to the valuation date, and by adding or subtracting, as the case may be, such prorated portion of the difference to or from the mean price obtaining on such nearest date before the valuation date.

If actual sale prices or quoted bona fide bid and asked prices are available on a date within a reasonable period prior to the valuation date, but if no actual sale prices or bona fide bid and asked prices are available on a date within a reasonable period after the valuation date, or vice versa, then the mean between such highest and lowest available sale prices or bid and asked prices may be taken as the value.

If actual sales or bona fide bid and asked prices are not available, then, in the case of corporate or other bonds, the value is to be arrived at by giving consideration to the soundness of the security, the interest yield, the date of maturity, and other relevant factors, and, in the case of shares of stock, upon the basis of the company's net worth, earning power, dividend-paying capacity, and all other relevant factors having a bearing upon the value of the stock. Complete financial and other data upon which the valuation is based should be submitted with the return.

In cases in which it is established that the value per bond or share of any security determined on the basis of selling or bid and asked prices as herein provided does not reflect the fair market value thereof, then some reasonable modification of such basis or other relevant facts and elements of value shall be considered in determining fair market value.

The full value of securities pledged to secure an indebtedness of the decedent should be included in the gross estate. If the decedent had a trading account with a broker, all securities belonging to the decedent and held by the broker at the date of death must be included at their fair market value as of the applicable valuation date. Securities purchased on margin for the decedent's account and held by a broker should also be returned at their fair market value as of the applicable valuation date. The amount of the decedent's indebtedness to a broker or other person with whom securities were pledged will be allowed as a deduction from the gross estate in accordance with sections 81.29, 81.36, and 81.52. (See section 81.12 for manner of listing and describing stocks and bonds.)

(d) *Interest in business.*—Care should be taken to arrive at an accurate valuation of any business in which the decedent was interested, whether as partner or proprietor. A fair appraisal as of the applicable valuation date should be made of all the assets of the business, tangible and intangible, including good will, and the business should be given a net value equal to the amount which a willing purchaser, whether an individual or corporation, would pay therefor to a willing seller in view of the net value of the assets and the demonstrated earning capacity. Special attention should be given to fixing an adequate figure for the value of the good will of the business in all cases in which the decedent has not agreed, for an adequate and full

consideration in money or money's worth, that his interest therein shall pass at his death to his surviving partner or partners.

The factors hereinbefore stated relative to the valuation of other property, if applicable, will be considered in determining the valuation of an interest in a business held as proprietor or partner. All evidence bearing upon such valuation should be submitted with the return, including copies of reports in any case in which examinations of the business have been made by accountants, engineers, or any technical experts as of or near the applicable valuation date.

(e) *Notes, secured and unsecured.*—The value of notes, whether secured or unsecured, will be presumed to be the amount of unpaid principal, plus interest, unless the executor establishes a lower value, or it is shown that they are worthless. However, items of interest should be separately listed on the estate tax return. Unless returned at face value, together with accrued interest, it must be shown by satisfactory evidence that the note is worth less than the unpaid amount because of the interest rate, or date of maturity, or other cause, or that it is uncollectible, either in whole or in part, by reason of the insolvency of the party or parties liable, or for other cause, and that the property, if any, pledged or mortgaged as security is insufficient to satisfy it.

(f) *Cash on hand or on deposit.*—The amount of cash belonging to the decedent, either in his possession at the date of death or in the possession of another, or deposited with a bank, should be included. If bank checks outstanding at the time of the decedent's death, given in discharge of bona fide, legal obligations of the decedent incurred for an adequate and full consideration in money or money's worth, and not as transfers coming within the provisions of section 811 (c) or (d) are subsequently honored by the bank and charged to the account, the balance remaining may be returned, provided the payments effected thereby are not claimed as deductions from the gross estate.

(g) *Household and personal effects.*—All household and personal effects of the decedent should be included at the price which a willing buyer would pay to a willing seller. A room by room itemization is desirable. All the articles should be named specifically, except that a number of articles contained in the same room, none of which has a value in excess of \$50, may be grouped. A separate value should be given for each article named. The executor may furnish, in lieu of an itemized list, a sworn statement, in duplicate, setting forth the aggregate value of the property as appraised by a competent appraiser, or appraisers of recognized standing and ability, or by a dealer or dealers in the class of personalty involved.

If, however, there are included among the household and personal effects articles having marked artistic or intrinsic value of a total

value in excess of \$2,000, such as jewelry, silverware, paintings, etchings, engravings, antiques, books, statuary, vases, oriental rugs, collections of coins and stamps, the appraisal of an expert or experts, under oath, should be filed with the return, Form 706, accompanied by the affidavit, in duplicate, of the executor as to the completeness of the itemized list of such property and of the disinterested character and the qualifications of the appraiser or appraisers.

If it is desired to effect distribution or sale of any portion of the household or personal effects in advance of the investigation by an officer of the Bureau of Internal Revenue, information to that effect should be given to the internal revenue agent in charge. The statement to the internal revenue agent in charge should be accompanied by a verified appraisal of such property and an affidavit of the executor as to the completeness of the list of such property and the qualifications of the appraiser, as already referred to, but such an appraisal and affidavit need not be in duplicate. If a personal inspection by an officer of the Bureau is not deemed necessary, the executor will be so advised. This procedure is designed to facilitate disposition of such property and to obviate future expense and inconvenience to the estate by affording the Commissioner an opportunity to make an investigation should one be deemed necessary prior to sale or distribution. (For location of the offices of the internal revenue agents in charge and the territory embraced in each division, see Appendix.)

If expert appraisers are employed care should be taken to see that they are reputable and of recognized competency to appraise the particular class of property involved. In the appraisal, books in sets by standard authors should be listed in separate groups. In listing paintings having artistic value, the size, subject, and artist's name should be stated. In the case of oriental rugs, the size, make, and general condition should be given. Sets of silverware should be listed in separate groups. Groups or individual pieces of silverware should be weighed and the weights given in troy ounces. In arriving at the value of silverware, the appraisers should take into consideration its antiquity, utility, desirability, condition, and obsolescence.

(h) *Other property*.—Any property not specifically treated in this section should be valued in accordance with the rule laid down in subsection (a) hereof. Live stock, farm machinery, harvested and growing crops should be itemized and the value of each item separately returned.

(i) *Annuities, life, remainder, and reversionary interests*.—(1) If the executor adopts the option set forth in section 81.11, any annuity, life, remainder, or reversionary interest includible in the gross estate should be valued as of the date of the decedent's death in accordance

with the provisions of this section and then such value should be adjusted as explained in section 81.11 for any difference in value between the date of death and the applicable subsequent date due to causes other than mere lapse of time. If the executor does not adopt the option set forth in section 81.11, the value of any such interest should be computed as hereinafter prescribed without such further adjustment for any decrease or increase in the value of the property subsequent to the date of death.

(2) The value of an annuity contract issued by a company regularly engaged in the selling of contracts of that character is established through the sale by that company of comparable contracts.

(3) All other future payments are to be discounted upon the basis of compound interest at the rate of 4 per cent a year. If the time of payment or of payments is dependent upon the continuation of, or upon the termination of a life or of lives, the Actuaries' or Combined Experience Table of Mortality, as extended, and established actuarial principles are to be used in the computation of the present worth. For the purpose of the computation the age of a person is to be taken as the age of that person at his nearest birthday. Table A, a part of this section, gives factors applicable to a case in which only one life is involved. (See paragraphs (4) to (8), inclusive.) Table B, a part of this section, gives factors applicable to a case in which only a term-certain is involved. (See paragraphs (9) to (11), inclusive.) If the time of payment or of payments is dependent upon the continuation of, or termination of more than one life, or there is a term-certain concurrent with one or more lives, a special computation in accordance with the first two sentences of this paragraph is necessary. A case requiring a special computation may be stated to the Commissioner who will furnish the applicable factor, provided such request is made sufficiently in advance of the due date of the return. Such request must fully disclose all relevant facts. The date of birth of each person, the duration of whose life may affect the value of the interest, should be established by affidavit.

(4) If the decedent had a remainder interest in property subject to the life estate of another, the present worth of the remainder interest at the time of death should be obtained by multiplying the value of the property at the time of death by the figure in column 3 of Table A opposite the number of years nearest to the actual age of the life tenant.

Example. The decedent was entitled to receive property worth \$50,000 upon the death of his elder brother, to whom the income for life had been bequeathed. The brother at the time of the decedent's death was 31 years 5 months old. By reference to Table A, it is found that the figure in column 3, opposite 31 years, is 0.31262. The

present worth of the remainder interest at the date of death is, therefore, \$15,631 (\$50,000 multiplied by 0.31262).

(5) In case the decedent was entitled to receive an annuity of a definite amount during the lifetime of another person, payable at the end of annual periods, the present worth at the time of the decedent's death must be computed upon the basis of the value of a life annuity at the age of the other person. The amount payable annually should be multiplied by the figure in column 2 of Table A opposite the number of years in column 1 nearest to the actual age of the other person.

Example. The decedent received under the terms of his father's will an annuity of \$10,000 for the life of his elder brother. The brother at the decedent's death was 40 years 8 months old. By reference to Table A, the figure in column 2 opposite 41 years, the number nearest to the brother's actual age, is found to be 14.86102. The present worth of the annuity at the date of the decedent's death is, therefore, \$148,610.20.

(6) In the case of an annuity under which the decedent was entitled to receive during the life of another payments at the end of each semi-annual, quarterly, or monthly period, the value of the annuity is to be determined by multiplying the aggregate amount to be paid within a year by the figure in column 2 of Table A opposite the number of years in column 1 nearest the actual age of the person whose life measures the duration of the annuity, and then multiplying the product by 1.01820 for monthly payments, by 1.01488 for quarterly payments, or by 1.00990 for semiannual payments.

Example. If, in the example given in paragraph (5), the annuity is payable in semiannual installments of \$5,000 at the end of each semiannual period, the aggregate annual amount, \$10,000, should be multiplied by the factor 14.86102, and the product should be multiplied by 1.00990. The present worth of the annuity at the date of death is, therefore, \$150,081.44 ($\$10,000 \times 14.86102 \times 1.00990$).

(7) If the first payment of an annuity for the life of an individual is to be paid at once, the value of the annuity is the sum of the first payment plus the present worth of a similar annuity, the first payment of which is not to be made until the end of the first period.

Example. The decedent was entitled to receive an annuity of \$50 a month payable during the life of another. The decedent died on the day a payment was due. At the date of the decedent's death the person whose life measures the duration of the annuity was 50 years of age. The value of the annuity at the date of decedent's death is \$50 plus the product of $\$50 \times 12 \times 12.47032$ (see Table A) $\times 1.01820$ (see preceding paragraph (6)), or \$7,668.38 [$\50 plus $(\$50 \times 12 \times 12.47032 \times 1.01820)$].

(8) If the decedent was entitled to receive the entire income of certain property during the life of another person, or was entitled to the use of nonincome-producing property during the life of another person, a hypothetical annuity at a rate of 4 per cent of the value of the property should be made the basis of the calculation. A provision for the payment of income in semiannual, quarterly, or monthly installments does not affect the value to be assigned to the life interest.

Example. The decedent was entitled to receive the income from a fund of \$100,000 during the life of a person 41 years old. The value of a hypothetical annuity of \$4,000, dependent upon the life of such a person, is indicated by the table to be \$59,444.08 (\$4,000 multiplied by 14.86102).

(9) If the decedent was entitled to receive property at the end of a specified number of years, Table B or an extension thereof should be used.

Example. The decedent, who was entitled to receive \$100,000 at a certain date, died 30 years prior to such date. The value of his right is the product of \$100,000 multiplied by 0.308319, the factor in column 3, Table B, opposite 30 years in column 1.

(10) In the case of an annuity under which the decedent was entitled during a term-certain to receive payments at the end of each semiannual, quarterly, or monthly period, the value of the annuity is to be determined by multiplying the aggregate amount to be paid within a year by the applicable factor in column 2 of Table B and the product is to be multiplied by 1.01820 for monthly payments, by 1.01488 for quarterly payments, or by 1.00990 for semiannual payments.

Example. The decedent was an annuitant for a term-certain, being entitled to \$1,000 annually payable in installments of \$500 at the end of each semiannual period. A semiannual payment of \$500 had been made just before the death of the decedent and there remained 20 payments to be made over a period of 10 years. The value of the annuity as of the date of the decedent's death is the product of $\$500 \times 2 \times 8.11089$ (see Table B) $\times 1.00990$, or \$8,191.19.

(11) If the first payment of an annuity for a definite number of years is to be paid at once, the applicable factor is the product of the factor shown in Table B multiplied by 1.02154 for monthly payments, by 1.02488 for quarterly payments, by 1.02990 for semiannual payments, or by 1.04 for annual payments.

Example. The decedent was the beneficiary of an annuity of \$50 a month. On the day a payment was due, the decedent died. There were 300 payments to be made, including the payment due. The value of the annuity as of the date of decedent's death is the product of $\$50 \times 12 \times 15.62208$ (see Table B) $\times 1.02154$, or \$9,575.15 ($\$50 \times 12 \times 15.62208 \times 1.02154$).

TABLE A

Table, single life, 4 per cent, showing the present worth of an annuity, or a life interest, and of a reversionary interest

1	2	3	1	2	3
Age	Annuity, or present value of \$1 due at the end of each year during the life of a person of specified age	Reversion, or present value of \$1 due at the end of the year of death of a person of specified age	Age	Annuity, or present value of \$1 due at the end of each year during the life of a person of specified age	Reversion, or present value of \$1 due at the end of the year of death of a person of specified age
	<i>Annuity</i>	<i>Reversion</i>		<i>Annuity</i>	<i>Reversion</i>
0	\$14. 72829	\$0. 39507	50	\$12. 47032	\$0. 48191
1	17. 30771	. 29586	51	12. 17919	. 49311
2	18. 69578	. 24247	52	11. 88408	. 50446
3	19. 15901	. 22465	53	11. 58531	. 51595
4	19. 41226	. 21491	54	11. 28325	. 52757
5	19. 55301	. 20950	55	10. 97789	. 53931
6	19. 61731	. 20703	56	10. 66982	. 55116
7	19. 62502	. 20673	57	10. 35931	. 56310
8	19. 61097	. 20727	58	10. 04630	. 57514
9	19. 53413	. 21022	59	9. 73131	. 58726
10	19. 45359	. 21332	60	9. 41474	. 59943
11	19. 36943	. 21656	61	9. 09765	. 61163
12	19. 28184	. 21993	62	8. 78052	. 62383
13	19. 19065	. 22344	63	8. 46412	. 63600
14	19. 09590	. 22708	64	8. 14888	. 64812
15	18. 99764	. 23086	65	7. 83552	. 66017
16	18. 89569	. 23478	66	7. 52476	. 67212
17	18. 79010	. 23884	67	7. 21699	. 68397
18	18. 68070	. 24305	68	6. 91298	. 69565
19	18. 56751	. 24740	69	6. 61301	. 70719
20	18. 45038	. 25191	70	6. 31716	. 71857
21	18. 32932	. 25656	71	6. 02612	. 72976
22	18. 20416	. 26138	72	5. 74003	. 74077
23	18. 07471	. 26636	73	5. 45928	. 75157
24	17. 94097	. 27150	74	5. 18402	. 76215
25	17. 80274	. 27682	75	4. 91463	. 77251
26	17. 65984	. 28231	76	4. 65125	. 78264
27	17. 51224	. 28799	77	4. 39383	. 79254
28	17. 35968	. 29386	78	4. 14286	. 80220
29	17. 20225	. 29991	79	3. 89858	. 81159
30	17. 03961	. 30617	80	3. 66071	. 82074
31	16. 87176	. 31262	81	3. 42900	. 82965
32	16. 69846	. 31929	82	3. 20258	. 83836
33	16. 51964	. 32617	83	2. 98024	. 84691
34	16. 33503	. 33327	84	2. 76106	. 85534
35	16. 14437	. 34060	85	2. 54366	. 86371
36	15. 94755	. 34817	86	2. 32795	. 87200
37	15. 74427	. 35599	87	2. 11384	. 88024
38	15. 53421	. 36407	88	1. 90115	. 88842
39	15. 31722	. 37241	89	1. 69107	. 89650
40	15. 09295	. 38104	90	1. 48540	. 90441
41	14. 86102	. 38996	91	1. 28432	. 91214
42	14. 62122	. 39918	92	1. 09024	. 91961
43	14. 37356	. 40871	93	. 90647	. 92667
44	14. 11860	. 41852	94	. 73687	. 93320
45	13. 85713	. 42857	95	. 58435	. 93906
46	13. 58958	. 43886	96	. 46182	. 94378
47	13. 31698	. 44935	97	. 36698	. 94742
48	13. 03942	. 46002	98	. 24038	. 95229
49	12. 75716	. 47088	99	. 00000	. 96154

TABLE B

Table showing the present worth at 4 per cent of an annuity for a term-certain, and of a reversionary interest postponed for a term-certain

1	2	3	1	2	3
Number of years	Present worth of an annuity of \$1, payable at the end of each year, for a certain number of years	Present worth of \$1, payable at the end of a certain number of years	Number of years	Present worth of an annuity of \$1, payable at the end of each year, for a certain number of years	Present worth of \$1, payable at the end of a certain number of years
1	<i>Annuity</i> \$0. 96154	<i>Reversion</i> \$0. 961538	16	\$11. 65229	\$0. 533908
2	1. 88609	. 924556	17	12. 16567	. 513373
3	2. 77509	. 888996	18	12. 65929	. 493628
4	3. 62989	. 854804	19	13. 13394	. 474642
5	4. 45182	. 821927	20	13. 59032	. 456387
6	5. 24214	. 790314	21	14. 02916	. 438834
7	6. 00205	. 759918	22	14. 45111	. 421955
8	6. 73274	. 730690	23	14. 85684	. 405726
9	7. 43533	. 702587	24	15. 24696	. 390121
10	8. 11089	. 675564	25	15. 62208	. 375117
11	8. 76047	. 649581	26	15. 98277	. 360689
12	9. 38507	. 624597	27	16. 32958	. 346816
13	9. 98565	. 600574	28	16. 66306	. 333477
14	10. 56312	. 577475	29	16. 98371	. 320651
15	11. 11839	. 555265	30	17. 29203	. 308319

*

SEC. 81.11 **Optional valuation date.**—In general, the object of subsection (j) of section 811 is to make provision whereby the amount of tax otherwise payable may be lessened when, within the year following the decedent's death, the gross estate has suffered a shrinkage in its aggregate value.

The executor may, by an election upon his return, Form 706, if filed within the time prescribed by law or prescribed by the Commissioner in pursuance of law, have the property which was included in the gross estate on the date of the decedent's death valued as of the applicable dates, as follows:

(a) Any property distributed, sold, exchanged, or otherwise disposed of within one year after the decedent's death, valued as of the date of such distribution, sale, exchange, or other disposition, whichever first occurs;

(b) Any property not distributed, sold, exchanged, or otherwise disposed of within such 1-year period, valued as of the date one year after the date of decedent's death;

(c) Any property, interest, or estate which is affected by mere lapse of time, valued as of the date of decedent's death; except that an adjustment is to be made for any difference in its value, not due to such lapse of time, as of the date one year after the date of decedent's death, or as of the date of its distribution, sale, exchange, or other disposition, whichever date first occurs.

Property "distributed" is limited to distributions thereof by the executor, or by the trustee in the case of property included in the gross estate under subsection (c), (d), or (f) of section 811. Distribution may be effected by the entry of the order or decree of distribution, or, if there is no such order or decree, by the segregation or separation of the property from the estate or the trust, or by the actual paying over or delivery of the property to the person entitled thereto by the will, or under the law, or by the terms of the trust.

The sale, exchange, or other disposition, to which subsection (j) refers, may be one made by the executor, or by the trustee of property included in the gross estate under subsection (c), (d), or (f) of section 811, or by any other person to whom the property had not been distributed by the executor or by such a trustee, or to whom it had not passed from the gross estate as the result of a sale, exchange, or other disposition, as, for example, a sale, exchange, or other disposition by an heir, devisee, donee, or grantee to whom the decedent in his lifetime transferred the property, or by the survivor of the decedent if the property had been held by them subject to the right of survivorship.

Property, in the case of a sale, exchange, or other disposition within the 1-year period, is to be valued as of the date when it ceases to form a part of the gross estate, that is, the date when the title passes as the result of a sale, exchange, or other disposition. The terms "distributed," "sold," "exchanged," and "otherwise disposed of" comprehend all possible ways by which property may be separated or passed from the gross estate. Thus, money on hand at decedent's death which is thereafter used in the payment of the funeral expenses, or in settlement of claims against the estate, or is invested, falls within the term "otherwise disposed of."

In valuing the gross estate under the optional valuation method, all of the property interests existing at the date of death which are a part of the gross estate as determined under the subsections of section 811 constitute the property to be valued as of one year after the date of the decedent's death, or as of the date of the decedent's death, or as of some intermediate date. Such property is hereinafter referred to as "included property." "Included property" as of the date of the decedent's death remains "included property" for the purpose of valuing the gross estate under the optional valuation method even though it is changed in form during the optional valuation period by being actually received, or disposed of, in whole or in part, by the estate. However, property earned or accrued (whether received or not) after the decedent's death and during the optional valuation period with respect to any property interest existing at the date of death, which does not represent a form of "included property" itself

or the receipt thereof, is to be excluded in valuing the gross estate at the subsequent valuation date and is hereinafter referred to as "excluded property." Among the items of "included property" to be valued in accordance with these principles are the following:

(1) *Interest-bearing obligations*.—Interest-bearing obligations, such as bonds and notes, may, at the date of death, comprise two elements of "included property," the principal of the obligation itself and interest accrued to the date of death, and each is to be separately valued as of the applicable valuation date. The bond or note is to be valued as of the applicable valuation date without regard to accrued interest. Interest accrued after the date of death and prior to the subsequent valuation date constitutes "excluded property." However, any part payment of principal made between the date of death and the subsequent valuation date, or any advance payment of interest for a period after the subsequent valuation date made during the optional valuation period which has the effect of reducing the value of the principal obligation as of the subsequent valuation date, will be included in the gross estate, and valued as of the date of such payment.

(2) *Leased property*.—The principles applicable with respect to interest-bearing obligations also apply to leased realty or personalty included in the gross estate with the obligation to pay rent reserved. Both the realty or personalty itself and the rents accrued to the date of death constitute "included property," and each is to be separately valued as of the applicable valuation date. Any rent accrued after the date of death and prior to the subsequent valuation date is "excluded property." The principle applicable with respect to interest paid in advance also applies to advance payments of rent.

(3) *Noninterest-bearing obligations*.—In the case of noninterest-bearing obligations sold at a discount, such as Treasury bills, the principal obligation and the discount amortized to the date of death are property interests existing at the date of death and constitute "included property." The obligation itself is to be valued thereafter at the subsequent valuation date without regard to any further increase in value due to amortized discount. The additional discount amortized after death and during the optional valuation period is the equivalent of interest accruing during that period and is, therefore, not to be included in the gross estate under the optional valuation method.

(4) *Stock of a corporation*.—Shares of stock in a corporation and dividends declared to stockholders of record on or before the date of the decedent's death and not collected at the date of death constitute "included property" of the estate. Ordinary dividends out of earnings and profits, whether in cash or in shares of the corporation or in other property, declared to stockholders of record after the date of

the decedent's death are "excluded property" and are not to be valued under the optional valuation method. If, however, dividends are declared to stockholders of record after the date of the decedent's death with the effect that the shares of stock at the subsequent valuation date do not reasonably represent the same "included property" of the gross estate as existed at the date of the decedent's death, such dividends are "included property" except to the extent that such dividends are out of earnings of the corporation after the date of the decedent's death. For example, if a corporation makes a distribution in complete or partial liquidation to stockholders of record during the optional valuation period, the amount of such distribution received on stock included in the gross estate is itself "included property," except to the extent that the distribution was out of earnings and profits since the date of the decedent's death. Another example is where a corporation, in which the decedent owned 50 per cent of the shares and which possessed at the date of the decedent's death accumulated earnings and profits equal to its paid-in capital, distributed all of its accumulated earnings and profits as a cash dividend to shareholders of record during the optional valuation period. In such a case the amount of the dividends received on stock includible in the gross estate will be included in the gross estate under the optional valuation method.

The operation of this section may be further illustrated by the following example in which the death of the decedent will be taken to have occurred on January 1, 1940:

Description	Subsequent valuation date	Value under option	Value at date of death
Bond, par value \$1,000, bearing interest at 4 per cent payable quarterly on Feb. 1, May 1, Aug. 1, and Nov. 1. Bond distributed to legatee on Mar. 1, 1940.	Mar. 1, 1940	\$1,000.00	\$1,000.00
Interest coupon of \$10 attached to bond and not cashed at date of death although due and payable Nov. 1, 1939. Cashed by executor on Feb. 1, 1940.	Feb. 1, 1940	10.00	10.00
Interest accrued from Nov. 1, 1939, to Jan. 1, 1940, collected on Feb. 1, 1940.	Feb. 1, 1940	6.67	6.67
Real estate. Not disposed of within year following death. Rent of \$300 due at the end of each quarter, Feb. 1, May 1, Aug. 1, and Nov. 1.	Jan. 1, 1941	11,000.00	12,000.00
Rent due for quarter ending Nov. 1, 1939, but not collected until Feb. 1, 1940.	Feb. 1, 1940	300.00	300.00
Rent accrued for November and December, 1939, collected on Feb. 1, 1940.	Feb. 1, 1940	200.00	200.00
Common stock, X Corporation, 500 shares, not disposed of within year following decedent's death.	Jan. 1, 1941	47,500.00	50,000.00
Dividend of \$2 per share declared Dec. 10, 1939, and paid on Jan. 10, 1940, to holders of record on Dec. 30, 1939.	Jan. 10, 1940	1,000.00	1,000.00

Properties, interests, or estates which are affected by mere lapse of time include patents, estates for the life of a person other than

the decedent, remainders, reversions, and other like properties, interests, or estates. The phrase "affected by mere lapse of time" has no reference to obligations for the payment of money, whether or not interest-bearing, the value of which changes with the passing of time. However, such an obligation, like any other property, may become affected by lapse of time when made the subject of a bequest or transfer which itself is creative of an interest or estate so affected.

The date of valuation of any property, interest, or estate so affected is, as prescribed in subsection (j), the date of decedent's death, but with an adjustment to be made of the value then obtaining, which adjustment, while disregarding any later increase or decrease in value due solely to lapse of time, adds to or subtracts from the value at death any difference between that value and the value as of the date one year after decedent's death, or the applicable intermediate date, if, and to the extent that, such difference was due to a cause or causes other than lapse of time. Accordingly, in the valuation of any property, interest, or estate affected by lapse of time, the difference between its value at decedent's death and its value as of the later date must be analyzed to determine the portion of such difference attributable to other cause or causes, and that portion only is to be applied in adjusting the value as of the date of the decedent's death. If, for example, the decedent owned a patent which on the date of his death had an unexpired term of 10 years and a value of \$100,000, and if the patent was sold 6 months after the decedent's death, at which time, because of the lapse of time and other causes, only \$65,000 was realized therefor, the value would be determined as follows:

Value of patent on date of decedent's death.....	\$100, 000
Difference between value on date of death and date of sale (\$100,000 minus \$65,000).....	\$35, 000
Portion of such difference due to the 6 months elapsing between date of death and date of sale (one-half of 10 per cent of \$100,000).....	5, 000
Portion of difference due to causes other than lapse of time.....	30, 000
Adjusted value of patent.....	70, 000

Or, to give another example, it may be supposed that the decedent was entitled to receive property (which at the time of his death was worth \$50,000) upon the death of another person who was entitled to the income therefrom for life and who was 31 years old at the time of the decedent's death. The value at decedent's death of his remainder interest would, as explained in section 81.10(i) of these regulations, be \$15,631, and if, due to economic conditions, the prop-

erty declined in value and became worth \$40,000 one year after the date of decedent's death, the value of the remainder interest would be determinable in the following manner:

Value of remainder interest at decedent's death (\$50,000 times factor (0.31262) shown opposite age 31 in column 3 of Table A, section 81.10)-----	\$15, 631. 00
Value of remainder interest one year after decedent's death (\$40,000 times factor (0.31929) shown in Table A, for age 32)-----	12, 771. 60
Net difference due in part to decline in value of the property and in part to increase in the value of the remainder interest due to lapse of time-----	2, 859. 40
Elimination of the increase due to lapse of time (\$50,000 times the difference between the factor for age 32 and the factor for age 31, or 0.00667)-----	333. 50
Portion of the difference in value due to the decline in value of the property-----	3, 192. 90
Value of remainder interest at decedent's death-----	15, 631. 00
Less portion of difference not due to lapse of time-----	3, 192. 90
Adjusted value of remainder interest-----	12, 438. 10

(The amount of the adjustment may be computed more readily by multiplying the decline in the value of the property (\$10,000) by the factor (0.31929) applicable to the later date.)

Deductions authorized under sections 812 and 861 are limited to the extent that allowance thereof is not, in effect, given in the valuing of the gross estate. Property passing by decedent's will, or passing by a transfer made by the decedent in his lifetime (if the transfer was such as to require the property transferred to be included in the gross estate) to or for any such public, charitable, or religious uses as are described in section 812(d) or in section 861(a)(3), is deductible at its value as of the date of the decedent's death, subject, however, to adjustment for any difference in value one year after such death, or at the date of the sale or exchange in the case of property sold or exchanged during such 1-year period. But no such adjustment may take into account any difference in value due to lapse of time or to the occurrence or nonoccurrence of a contingency.

The election of the executor to have the gross estate valued in accordance with the method authorized by section 811(j), in order to be effective, must be made on the return filed within 15 months from the decedent's death or within the period of any extension of time granted under the provisions of section 81.69 or 81.70 of these regulations. Unless the executor makes such election, all property included in the gross estate must be valued as of the date of the

decedent's death. In no case may the election be exercised, or a previous election changed, after the expiration of the time for the filing of the return. The election applies to all the property included in the gross estate on the date of the decedent's death. It cannot be applied only to a portion of such property.

In every case where the election is exercised, the return, Form 706, must set forth (1) an itemized description of all property included in the gross estate on the date of the decedent's death, together with the value of each item as of that date, (2) an itemized disclosure of all distributions, sales, exchanges, and other dispositions of any of the property during the 1-year period after the decedent's death, together with the dates thereof, and (3) the value of each item of property determined in accordance with the provisions of subsection (j). Interest and rents accrued at the date of the decedent's death and dividends declared to stockholders of record on or before the date of the decedent's death and not collected at such date shall be separately shown. All the information indicated by Form 706 must be supplied. Statements as to distributions, sales, exchanges, and other dispositions of the property within the 1-year period must be supported by evidence. If the court makes an order or decree of distribution during that period, a certified copy thereof must be submitted as part of the evidence. The Commissioner may require the submission of such additional evidence as is deemed necessary.*

SEC. 81.12 Description of property listed on return.—In listing upon the return the property constituting the gross estate (other than household and personal effects, as to which see section 81.10(g)), the description thereof should be such that the property may be readily identified. Thus, a legal description should be given of each parcel of real estate, and, if located in a city, the name of street and number, its area, and, if improved, a short statement of the character of the improvements. Description of bonds should include number held, principal amount, name of obligor, date of maturity, rate of interest, date or dates on which interest is payable, series number if there is more than one issue, the exchange upon which listed, or the principal business office of the corporation, if unlisted. Description of stocks should include number of shares, whether common or preferred, and, if preferred, what issue thereof, par value, quotation at which returned, exact name of corporation, and, if the stock is unlisted, the location of the principal business office and State in which incorporated and the date of incorporation. If a listed security, state principal exchange upon which sold. Description of notes should include name of maker, date on which given, date of maturity, amount of principal, amount of principal unpaid, rate of interest and whether simple or compound, date to which interest has

been paid and amount of unpaid interest. Description of land contracts received should include name of vendee, date of contract, description of property, sale price, initial payment, amounts of installment payments, unpaid balance of principal and accrued interest, interest rate and date prior to decedent's death to which interest had been paid.

Description of bank accounts should disclose name and address of depository, amount on deposit, whether a checking, savings, or a time-deposit account, rate of interest, if any payable, amount of interest accrued and payable, and serial number. Description of life insurance should give the name of the insurer, number of policy, name of the beneficiary, and the amount of the proceeds. For every policy of life insurance listed on the return, the executor must procure a statement by the company on Form 712 and file it with the collector. (See section 81.28.) In describing an annuity, the name and address of the grantor of the annuity should be given, or, if the annuity is payable out of a trust or other funds, such a description as will fully identify it. If the annuity is payable for a term of years, the duration of the term and the date on which it began should be given, and if payable for the life of a person other than the decedent, the date of birth of such person should be stated. Judgments should be described by giving the title of the cause and the name of the court in which rendered, date of judgment, name and address of judgment debtor, amount of judgment, and rate of interest to which subject, and by stating whether any payments have been made thereon, and, if so, when and in what amounts.*

GROSS ESTATE—GENERAL

SEC. 811. [Part II, Subchapter A.] GROSS ESTATE.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

(a) DECEDENT'S INTEREST.—To the extent of the interest therein of the decedent at the time of his death;

* * * * *

SEC. 802. [Part II, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of nonresidents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. * * *

SEC. 81.13 Property of decedent at time of death.—It is designed by the foregoing provisions of the Internal Revenue Code that there shall be included in the gross estate all property of the decedent, whether real or personal, tangible or intangible, the beneficial own-

ership of which was in the decedent at the time of his death, except real property situated outside the United States.

All real property situated in the United States and owned by the decedent at the date of his death is included in the gross estate, whether the decedent was a resident or a nonresident, a citizen or not a citizen, and whether the property came into the possession and control of the executor or administrator or passed directly to heirs or devisees. All personal property owned by the decedent at the date of his death is included in the gross estate, regardless of its situs. However, in the case of a decedent who was a nonresident not a citizen, only the property situated in the United States is included in the net estate and property situated outside the United States need not be disclosed unless deductions are claimed or such information is specifically requested. (See sections 81.52, 81.53, 81.54, and 81.66.) As to the situs of the personal property of decedents who were nonresidents not citizens, see section 81.50.

A cemetery lot owned by the decedent is part of his gross estate, but its value is limited to the salable value of such part of it as is not designed for the interment of the decedent or members of his family. Property subject to homestead or other exemptions under local law must be included in the gross estate. Notes or other claims held by the decedent should be included, though they are canceled by his will. As to the valuation of notes and claims, see section 81.10(e).

Interest and rents accrued at the date of the decedent's death and dividends declared to stockholders of record on or before the date of the decedent's death and not collected at such date constitute part of the gross estate.

Various statutory provisions, which exempt bonds, notes, bills, and certificates of indebtedness of the Federal Government or its agencies and the interest thereon from taxation, are not applicable to the estate tax, since this tax is an excise tax on the transfer, and is not a tax on the property transferred. In case the decedent was a nonresident who was not a citizen and not engaged in business in the United States, bonds, notes, and certificates of indebtedness of the United States, beneficially owned by such decedent should not be included; however, bonds, notes, and certificates of indebtedness of the United States, issued on or after March 1, 1941, which such decedent beneficially owned, should be included in the gross estate.*

GROSS ESTATE—DOWER AND CURTESY

SEC. 811. [Part II, Subchapter A.] GROSS ESTATE.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or per-

sonal, tangible or intangible, wherever situated, except real property situated outside of the United States—

* * * * *

(b) **DOWER OR CURTESY INTERESTS.**—To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower, curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy;

* * * * *

SEC. 802. [Part I, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of nonresidents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. * * *

SEC. 81.14 Dower and curtesy.—The above provisions of the Internal Revenue Code include in the gross estate dower and curtesy and all interests created by statute in lieu thereof, although the estate or interest so created may differ in character from dower or curtesy. The effect of the provision is to require the inclusion of the full value of the property, without deduction of the value of the interest of the surviving husband or wife, and without regard to the time when the right to such an interest arose.*

GROSS ESTATE—TRANSFERS BY DECEDENT DURING LIFETIME

SEC. 811. [Part II, Subchapter A.] GROSS ESTATE.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

* * * * *

(c) **TRANSFERS IN CONTEMPLATION OF, OR TAKING EFFECT AT DEATH.**—To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this subchapter;

(d) **REVOCABLE TRANSFERS—**

(1) **TRANSFERS AFTER JUNE 22, 1936.**—To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona-fide sale for an adequate and full considera-

tion in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished in contemplation of decedent's death;

(2) TRANSFERS ON OR PRIOR TO JUNE 22, 1936.—To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Except in the case of transfers made after June 22, 1936, no interest of the decedent of which he has made a transfer shall be included in the gross estate under paragraph (1) unless it is includible under this paragraph;

(3) DATE OF EXISTENCE OF POWER.—For the purposes of this subsection the power to alter, amend, or revoke shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, or revocation takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such purpose if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given, or the power exercised, on the date of his death.

(4) RELINQUISHMENT OF POWER IN CONTEMPLATION OF DEATH.—The relinquishment of any such power, not admitted or shown to have been in contemplation of the decedent's death, made within two years prior to his death without such a consideration and affecting the interest or interests (whether arising from one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggregate value, at the time of such death, in excess of \$5,000, then, to the extent of such excess, such relinquishment or relinquishments shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this subchapter.

* * * * *

(i) TRANSFERS FOR INSUFFICIENT CONSIDERATION.—If any one of the transfers, trusts, interests, rights, or powers, enumerated and described in subsections (c), (d), and (f) is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property

otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

* * * * *

SEC. 812. [Part II, Subchapter A.] NET ESTATE.

* * * * *

(b) (5) * * * For the purposes of this subchapter, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth."

* * * * *

SEC. 802. [Part I, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of nonresidents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. * * *

SEC. 302. (c) Revenue Act of 1926 (as originally enacted) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Where within two years prior to his death but after the enactment of this Act and without such a consideration the decedent has made a transfer or transfers, by trust or otherwise, of any of his property, or an interest therein, not admitted or shown to have been made in contemplation of or intended to take effect in possession or enjoyment at or after his death, and the value or aggregate value, at the time of such death, of the property or interest so transferred to any one person is in excess of \$5,000, then, to the extent of such excess, such transfer or transfers shall be deemed and held to have been made in contemplation of death within the meaning of this title. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death but prior to the enactment of this Act, without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;

Joint Resolution of March 3, 1931 (Public, No. 131, Seventy-first Congress) :

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of subdivision (c) of section 302 of the Revenue Act of 1926 is amended to read as follows:

"To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, including a transfer under which the transferor has retained for his life or any period not ending before his death (1) the possession or enjoyment of, or the income from, the property or (2) the right to

designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth."

SEC. 803. Revenue Act of 1932.

(a) Section 302 (c) of the Revenue Act of 1926, as amended by the Joint Resolution of March 3, 1931, is amended to read as follows:

"(c) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title."

SEC. 302. (d) Revenue Act of 1926 (as originally enacted). To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. The relinquishment of any such power, not admitted or shown to have been in contemplation of the decedent's death, made within two years prior to his death but after the enactment of this Act without such a consideration and affecting the interest or interests (whether arising from one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggregate value, at the time of such death, in excess of \$5,000, then, to the extent of such excess, such relinquishment or relinquishments shall be deemed and held to have been made in contemplation of death within the meaning of this title;

SEC. 401. Revenue Act of 1934.

Section 302(d) of the Revenue Act of 1926 is amended to read as follows:

"(d) (1) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth.

"(2) For the purposes of this subdivision the power to alter, amend, or revoke shall be considered to exist on the date of the decedent's

death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, or revocation takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such purpose if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given, or the power exercised, on the date of his death.

"(3) The relinquishment of any such power, not admitted or shown to have been in contemplation of the decedent's death, made within two years prior to his death without such a consideration and affecting the interest or interests (whether arising from one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggregate value, at the time of such death, in excess of \$5,000, then, to the extent of such excess, such relinquishment or relinquishments shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;"

SEC. 805. Revenue Act of 1936.

(a) Section 302(d)(1) of the Revenue Act of 1926, as amended, is amended to read as follows:

"(d)(1) To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona-fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished in contemplation of decedent's death."

(b) Except in the case of transfers made after the date of the enactment of this Act, no interest of the decedent of which he has made a transfer shall be included in the gross estate under such section 302(d)(1) unless it was includible under such section before its amendment by this section.

SEC. 81.15 Transfers during life.—The following classes of transfers made by the decedent prior to his death, whether in trust or otherwise, if not constituting bona fide sales for an adequate and full consideration in money or money's worth, are subject to the tax: (1) transfers in contemplation of death (see section 81.16); (2) transfers conditioned upon the decedent's death (see section 81.17); (3) transfers under which the decedent reserved or retained (in whole or in part) the use, possession, rents, or other income or enjoyment of the transferred property, for his life, or for a period not ascertainable without reference to his death, or for a period of such duration as to evidence an intention that it should extend to his death; including also the reservation or retention of the use, possession, rents,

or other income, the actual enjoyment of which was to await the termination of a transferred precedent interest or estate (see section 81.18); (4) transfers under which the decedent retained the right, either alone or in conjunction with another person or persons, to designate who should possess or enjoy the property or the income therefrom (see section 81.19); and (5) transfers under which the enjoyment of the transferred property was subject at decedent's death to a change through the exercise, either by the decedent alone or in conjunction with another person or persons, of a power to alter, amend, revoke, or terminate, or where such a power was relinquished in contemplation of decedent's death (see sections 81.20 and 81.21).

The value of transferred property includible in the gross estate is the value thereof at the date of decedent's death, or if the executor has duly elected pursuant to the provisions of section 811(j) to have the value of the gross estate determined as of the dates therein prescribed, then the value will be that as of the applicable date or dates so prescribed (see section 81.11). If a portion only of the property was so transferred as to come within the terms of the statute, only a corresponding proportion of the value of the property should be included in ascertaining the value of the gross estate. If the transferee has made additions to the property, or betterments, the enhanced value of the property due thereto should not be included.

To constitute a bona fide sale for an adequate and full consideration in money or money's worth the transfer must have been made in good faith, and the price must have been an adequate and full equivalent reducible to a money value. If the price was less than such a consideration, only the excess of the fair market value of the property (as of the date of decedent's death, or as of the applicable date under such an election as is mentioned in the last preceding paragraph) over the price received by the decedent should be included in ascertaining the value of the gross estate. For the purposes of the tax a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in decedent's property or estate, is not to any extent a consideration in money or money's worth.

In case a transfer, by trust or otherwise, was made by a written instrument, duplicate copies thereof should be filed with the return. If of public record, one of the copies should be certified; if not of record, one copy should be verified. If the decedent was a nonresident, only one copy, certified or verified, need be filed.

All transfers made by the decedent during his life of an amount of \$5,000 or more, except bona fide sales for an adequate and full consideration in money or money's worth, must be disclosed in the return, whether the executor regards such transfers as subject to the

tax or not. If the executor believes that such a transfer is not subject to the tax, a brief statement of the pertinent facts should be made.*

SEC. 81.16 Transfers in contemplation of death.—Transfers in contemplation of death made by the decedent after September 8, 1916, other than bona fide sales for an adequate and full consideration in money or money's worth, must be included in the gross estate. A transfer in contemplation of death is subject to the tax although the decedent parted absolutely and immediately with his title to, and possession and enjoyment of, the property.

The phrase "contemplation of death," as used in the statute, does not mean, on the one hand, that general expectation of death such as all persons entertain, nor, on the other, is its meaning restricted to an apprehension that death is imminent or near. A transfer in contemplation of death is a disposition of property prompted by the thought of death (though it need not be solely so prompted). A transfer is prompted by the thought of death if it is made with the purpose of avoiding the tax, or as a substitute for a testamentary disposition of the property, or for any other motive associated with death. The bodily and mental condition of the decedent and all other attendant facts and circumstances are to be scrutinized to determine whether or not such thought prompted the disposition.

Any transfer without an adequate and full consideration in money or money's worth, made by the decedent within two years of his death, of a material part of his property in the nature of a final disposition or distribution thereof, is, unless shown to the contrary, deemed to have been made in contemplation of death.

If the executor contends that the value of a transfer of \$5,000 or more made by the decedent subsequent to September 8, 1916, should not be included in the gross estate because he considers that such transfer was not made in contemplation of death, he should file sworn statements with the return, in duplicate, of all the material facts and circumstances, including those directly or indirectly indicating the decedent's motive in making the transfer and his mental and physical condition at that time, and one copy of the death certificate.

The fact that a gift was made as an advancement to be taken into account upon the final distribution of the decedent's estate is not, in and of itself, determinative of its taxability. (See section 81.15.)*

SEC. 81.17 Transfers conditioned upon survivorship.—The statutory phrase, "a transfer * * * intended to take effect in possession or enjoyment at or after his death," includes a transfer by the decedent prior to his death (other than a bona fide sale for an adequate and full consideration in money or money's worth) whereby and to the extent that the beneficial title to the property transferred (if the

transfer was in trust), or the legal title thereto (if the transfer was otherwise than in trust), is not to pass from the decedent to the donee unless the decedent dies before the donee or another person, or its passing is otherwise conditioned upon decedent's death; or, if title passed to the donee, it is to be defeated and the property is to revert to the decedent as his own should he survive the donee or another person, or the reverting of the property to the decedent is conditioned upon some other contingency terminable by his death. In such instances, it is immaterial whether the decedent's interest arose by implication of law or by the express terms of the instrument of transfer. Since in such transfers the decedent's death is requisite to a termination of his interest in the property, it is unimportant whether his interest be denominated a reversion or a possibility of reverter, and whether the interest of the donee be contingent or vested subject to be divested, and the tax will apply, unless otherwise provided in the next succeeding paragraph, without regard to the time when the transfer was made, whether before or after the enactment of the Revenue Act of 1916. Thus, upon a transfer by a decedent of property in which an estate for life is given to one and an estate in remainder to another, but with a provision added that the estate in remainder shall revest in the decedent should he survive the owner of the life estate, there is to be included, in determining the value of the decedent's gross estate following his death, the value as of the date of his death of the estate in remainder, if the life estate is then outstanding. The value of the outstanding life estate is not to be included in determining the value of the gross estate, unless that estate had been transferred in contemplation of the decedent's death, or otherwise as to render it a part of the gross estate. If by reason of an election by the executor the valuation of the gross estate is governed by the provisions of section 81.11, adjustments in the values of such transferred estates may be required. (See section 81.15.)

Where the transfer was made during the period between November 11, 1935 (that being the date upon which the Supreme Court of the United States rendered its decisions in the cases of *Helvering v. St. Louis Union Trust Co.* (296 U. S., 39) and *Becker v. St. Louis Union Trust Co.* (296 U. S., 48)), and January 29, 1940 (that being the date upon which such Court rendered its decisions in *Helvering v. Hallock* and companion cases (309 U. S., 106)), and the Commissioner, whose determination therein shall be conclusive, determines that such transfer is classifiable with the transfers involved in such two cases decided on November 11, 1935, rather than with the transfer involved in the case of *Klein v. United States* (283 U. S., 231), previously decided by such Court, then the property so transferred shall not be included in the decedent's gross estate under the provisions of this section, if

the following condition is also met: Such transfer shall have been finally treated for all gift tax purposes, both as to the calendar year of such transfer and subsequent calendar years, as a gift in an amount measured by the value of the property undiminished by reason of a provision in the instrument of transfer by which the property, in whole or in part, is to revert to the decedent should he survive the donee or another person, or the reverting thereof is conditioned upon some other contingency terminable by decedent's death.*

SEC. 81.18 Transfers with possession or enjoyment retained.—Except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the gross estate embraces (section 811(c)) all property transferred by the decedent, whether in trust or otherwise, if he retained or reserved the use, possession, right to the income, or other enjoyment of the transferred property, and if the transfer was made—

(1) At any time after 10:30 p. m., eastern standard time, March 3, 1931, and such retention or reservation is for his life, or for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period; or

(2) At any time after 5 p. m., eastern standard time, June 6, 1932, and such retention or reservation is for any period mentioned in (1) or for any period not ascertainable without reference to his death.

A reservation for a "period not ascertainable without reference to his death" may be illustrated by a reservation of the right to receive, in quarterly payments, the income of the transferred property where none of the income between the last quarterly payment and decedent's death was to be received by him or his estate; or by a reservation of a life estate following a precedent estate for life or a term of years.

The use, possession, right to the income, or other enjoyment of the property will be considered as having been retained by or reserved to the decedent to the extent that during any such period it is to be applied towards the discharge of a legal obligation of the decedent, or otherwise for his pecuniary benefit.

If such retention or reservation is of a part only of the use, possession, income, or other enjoyment of the property, then only a corresponding proportion of the value of the property should be included in determining the value of the gross estate.

(See section 81.15.)*

SEC. 81.19 Transfers with right retained to designate who shall possess or enjoy.—The Internal Revenue Code (section 811(c)) provides that, except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the gross estate shall em-

brace all property transferred by the decedent, whether in trust or otherwise, if there is retained by or reserved to him for his life, or for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period, or for a period not ascertainable without reference to his death, the right either alone or in conjunction with any other person or persons to designate the person or persons who shall possess or enjoy the transferred property, or the income thereof.

This provision of the Internal Revenue Code covers, in the main, transfers to which also apply the provisions of certain other subsections of section 811. Thus, to the extent that the enjoyment of the transferred property is subject to any change through the exercise of a power by the decedent alone or in conjunction with any other person or persons to alter, amend, revoke, or terminate, the provisions of section 811(d) and of section 81.20 will apply. Or, if the decedent reserved to himself a general power of appointment and the property passed in his lifetime or by his will pursuant to the exercise of such power, the property may be required by section 811(f) to be included in the gross estate, and in such case the provisions of section 81.24 will apply without regard to when such power was created.

A transfer of the kind dealt with in this section, when not also falling within the provisions of some other subsection of section 811, requires the inclusion of the transferred property within the gross estate, if the transfer was made—

(1) At any time after 10:30 p. m., eastern standard time, March 3, 1931, and the right to so designate was retained by or reserved to the decedent alone for his life, or for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period; or

(2) At any time after 5 p. m., eastern standard time, June 6, 1932, and the right to so designate was retained by or reserved to the decedent alone or in conjunction with any other person or persons for decedent's life, or for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period, or for any period not ascertainable without reference to his death.

If the retention or reservation of the right described pertains to a part only of the transferred property, or to a part only of the income therefrom, then only a corresponding proportion of the value of the transferred property is includible in determining the value of the gross estate.

The right to so designate will be treated as having been retained or reserved if at the time of the transfer there was an understanding, either expressed or implied, that such right would later be created or conferred.

(See section 81.15.)*

SEC. 81.20 Transfers with power to change the enjoyment.—(a) *Transfers included.*—Subsection (d) of section 811 embraces a transfer by trust or otherwise (if not amounting to a bona fide sale for an adequate and full consideration in money or money's worth) when at the time of decedent's death the enjoyment of the transferred property, or some part thereof or interest therein, was subject to any change through a power exercisable either by the decedent alone, or by him in conjunction with some other person or persons, to alter, or amend, or revoke, or terminate. (See section 81.15.)

The addition to subdivision (d)(1) of the Revenue Act of 1926, by section 805 of the Revenue Act of 1936, of the phrase to the effect that it is not material in what capacity the power was subject to exercise by the decedent or by the other person or persons in conjunction with the decedent (which phrase is also embodied in subsection (d)(1) of section 811 of the Internal Revenue Code), is considered merely declaratory of the meaning of the subdivision prior to the addition of the phrase.

The second phrase added to this subdivision of the Revenue Act of 1926 by amendment in 1936 (also embodied in section 811(d)(1) of the Internal Revenue Code), namely, "without regard to when or from what source the decedent acquired such power," is not considered declaratory of the meaning of the subdivision prior to the amendment in a case in which no one of the powers enumerated in the subdivision was reserved at the time of the making of the transfer, but one or more thereof were conferred subsequent thereto (whatever the source from which conferred) without any understanding, expressed or implied, had in connection with the making of the transfer that such power or powers should be later conferred.

The third change made in the subdivision by the Revenue Act of 1936 (which is also embodied in subsection (d)(1) of section 811 of the Internal Revenue Code) consists of the addition of the words "or terminate" following the words "to alter, amend, revoke." Such addition is considered but declaratory of the meaning of the subdivision prior to the amendment. A power to terminate capable of being so exercised as to revest in the decedent the ownership of the transferred property or an interest therein, or as otherwise to inure to his benefit or the benefit of his estate, is, to that extent, the equivalent of a power to "revoke," and when otherwise so exercisable as to effect a change in the enjoyment, is the equivalent of a power to "alter."

(b) *Taxability*.—The property or any interest therein transferred as described in subsection (a) shall be included in the gross estate if it comes within any one of the following paragraphs:

(1) If the transfer was made prior to the enactment of the Revenue Act of 1924 (4:01 p. m., eastern standard time, June 2, 1924), and the power was reserved at the time of the transfer and was exercisable by the decedent alone or in conjunction with a person or persons having no substantial adverse interest or interests in the transferred property, or if exercisable in conjunction with a person having a substantial adverse interest or with several persons some or all of whom held such an adverse interest, then to the extent of any interest or interests held by a person or persons not required to join in the exercise of the power and to the extent of any adverse interest which was not substantial.

(2) If the transfer was made after the enactment of the Revenue Act of 1924 (4:01 p. m., eastern standard time, June 2, 1924) and before the amendment of the subdivision by the Revenue Act of 1936 became effective (June 23, 1936), and the power was reserved at the time of the transfer and was exercisable by the decedent alone or in conjunction with a person or persons either having or not having a substantial adverse interest or interests in the transferred property, or in conjunction with persons one or more of whom had and one or more of whom had not such an adverse interest.

(3) If the transfer was made after June 22, 1936 (the date of the enactment of the Revenue Act of 1936), and the power was either reserved at the time of the transfer or later created or conferred, without regard to the source from which the power was acquired, and whether exercisable by the decedent alone or in conjunction with a person or persons either having or not having a substantial adverse interest or interests in the transferred property, or in conjunction with persons one or more of whom had and one or more of whom had not such an adverse interest.

As used in this and in the next succeeding section, the expression "reserved at the time of the transfer" refers to a power to which the transfer was subject when made, whether the power arose by implication of law or by the express terms of the instrument of transfer, and which continued to the date of decedent's death (see the paragraph next following as to the conditions under which the power will be considered as existent at decedent's death) to be exercisable by decedent alone or by him in conjunction with some other person or persons, and includes any understanding, expressed or implied, had in connection with the making of the transfer that the power should later be created or conferred.

The power to alter, amend, revoke, or terminate will be considered to have existed on the date of the decedent's death, though the exercise of the power was subject to a precedent giving of notice, or though the alteration, amendment, revocation, or termination would take effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice had been given or the power had been exercised, or though the exercise of the power was restricted to a particular time which had not arrived, or the happening of a particular event which had not occurred, at decedent's death. In determining the value of the gross estate in such cases the full value of the property transferred subject to the power should be discounted for the period required to elapse between the date of decedent's death and the date upon which the alteration, amendment, revocation, or termination could take effect. (See section 81.10(i)(3).)

The provisions of this section do not apply to a transfer if the power may be exercised only with the consent of all parties having an interest, vested or contingent, in the transferred property, and if the power adds nothing to the rights of the parties as conferred by the applicable local law.*

SEC. 81.21 Power relinquished in contemplation of death.—If the decedent had previously held, either alone or in conjunction with another person or persons, a power to alter, amend, revoke, or terminate a transfer made by him, and the power was subsequently relinquished in contemplation of the decedent's death (the relinquishment not amounting to a bona fide sale for an adequate and full consideration in money or money's worth), then to the extent that the transferred property or any interest therein had been subject to such relinquished power it is to be included in the gross estate if coming within any one of the following paragraphs:

(a) If the transfer was made prior to the enactment of the Revenue Act of 1924 (4:01 p. m., eastern standard time, June 2, 1924), and the power was reserved at the time of the transfer and was relinquished after the enactment of the Revenue Act of 1916 (September 8, 1916), and the power was exercisable by the decedent alone or in conjunction with a person or persons having no substantial adverse interest or interests in the transferred property, or if exercisable in conjunction with a person having a substantial adverse interest or with several persons some or all of whom held such an adverse interest, then to the extent of any interest or interests held by a person or persons not required to join in the exercise of the power and to the extent of any adverse interest which was not substantial.

(b) If the transfer was made after the enactment of the Revenue Act of 1924 (4:01 p. m., eastern standard time, June 2, 1924) and before the amendment of the subdivision by the Revenue Act

of 1936 became effective (June 23, 1936), and the power was reserved at the time of the transfer and was exercisable by the decedent alone or in conjunction with a person or persons either having or not having a substantial adverse interest or interests in the transferred property, or in conjunction with persons one or more of whom had and one or more of whom had not such an adverse interest.

(c) If the transfer was made after June 22, 1936 (the date of the enactment of the Revenue Act of 1936), and the power was either reserved at the time of the transfer or later created or conferred, without regard to the source from which the power was acquired, and whether exercisable by the decedent alone or in conjunction with a person or persons either having or not having a substantial adverse interest or interests in the transferred property, or in conjunction with persons one or more of whom had and one or more of whom had not such an adverse interest. If the transfer was made after June 22, 1936, and the person or persons, in conjunction with whom the decedent could exercise the power, relinquished the power in contemplation of the decedent's death and thereby extinguished the power, the transfer is includible in the decedent's gross estate.

If the relinquishment be not admitted or shown to have been in contemplation of decedent's death, but occurred within two years prior to such death, and affected the interest or interests (whether arising from one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggregate value in excess of \$5,000 (as of the date of decedent's death, or as of the applicable date under such an election as is referred to in the second paragraph of section 81.15) then, to the extent of such excess, the relinquishment will be deemed, unless shown to the contrary, to have been in contemplation of decedent's death. (See section 81.15.)*

GROSS ESTATE—PROPERTY HELD JOINTLY

SEC. 811. [Part II, Subchapter A.] GROSS ESTATE.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

* * * * *

(e) **JOINT INTERESTS.**—To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: *Provided*, That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have

been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further*, That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants.

* * * * *

SEC. 812. [Part II, Subchapter A.] NET ESTATE.

* * * * *

(b)(5) * * * For the purposes of this subchapter, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth."

* * * * *

SEC. 802. [Part I, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of nonresidents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. * * *

SEC. 81.22 Property held jointly or by the entirety.—The foregoing provisions of the Internal Revenue Code extend to joint ownerships wherein the right of survivorship exists, regardless of when such ownerships were created. They specifically reach property held jointly by the decedent and any other person or persons, or by the decedent and spouse as tenants by the entirety, or deposited with any person or institution carrying on a banking business in the name of the decedent and any other person and payable to either or the survivor, provided the decedent contributed toward the acquisition of the property so held or deposited, or acquired it by gift, bequest, devise, or inheritance. Section 811(e) applies to all classes of property, whether real or personal, in case the survivor takes the entire interest therein by right of survivorship and no interest therein forms a part of the decedent's estate for purposes of administration. It has no reference to property held by the decedent and any other person or persons as tenants in common.*

SEC. 81.23 Taxable portion.—The entire property is *prima facie* a part of the decedent's gross estate. But it is not the intent of the statute that there should be so included a greater part or proportion thereof than is represented by an outlay of funds, which, in the first instance, were decedent's own, or more than a fractional part equal to that of the other joint owner should neither have parted with any

consideration in its acquirement. Facts, which in a given case bring it within any one of the exceptions enumerated in the statute, may be submitted by the executor.

Whether the entire property, or only a part, or none of it, enters into the make-up of the gross estate depends upon the following considerations: (1) So much of the property (whether the whole, or a part thereof) as originally belonged to the other joint owner, and which at no time in the past had been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth, forms no part of the decedent's gross estate. (2) If the facts are otherwise the same as in (1), but the decedent paid to such other joint owner a consideration for the interest by him (the decedent) acquired in the property, then such portion of the property, proportionate to the consideration so paid, constitutes a part of the gross estate. (3) If the property, or a part thereof, or a part of the consideration wherewith it was acquired, had at any time been acquired by the other joint owner from the decedent as a gift, or for less than an adequate and full consideration in money or money's worth, then such portion of the entire property, proportionate to the consideration, if any, which in the first instance was paid from such other joint owner's own funds, forms no part of the gross estate. (4) If the property was acquired by the decedent and his or her surviving spouse as tenants by the entirety by gift, bequest, devise, or inheritance, then only one-half of the property becomes a part of the gross estate. (5) If the property was acquired by the decedent and the other joint owner as joint tenants by gift, bequest, devise, or inheritance, and their interests are not otherwise specified or fixed by law, then only one-half of the property is a part of the gross estate; or, if so acquired by the decedent and two or more persons, and the interests of the several joint tenants are not otherwise determinable, then the decedent and the other joint tenants surviving him shall be deemed the owners of equal fractional parts, and only one of such fractional parts is to be included in the gross estate.

The following are given as illustrative: (a) If the decedent furnished the entire purchase price, the entire property should be included in the gross estate; (b) if the decedent furnished a part only of the purchase price, only a corresponding portion of the property should be so included; (c) if the decedent, prior to the acquisition of the property by himself and the other joint owner, gave the latter a sum of money which later constituted such other joint owner's entire contribution to the purchase price of the property, the entire property should be included; (d) if the other joint owner, prior to the acquirement of the property, received from the decedent, for less than an adequate and full consideration in money

or money's worth, property which thereafter became, as such, or in a converted form, part of the purchase price of the property, the value of the property to be included is to be reduced proportionately to the consideration furnished by the other joint owner in the original transaction; (e) if the decedent furnished no part of the purchase price, no part of the property should be included; (f) if the decedent and spouse acquired the property by will as tenants by the entirety, one-half of the property should be included.

For the purposes of the estate tax, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, is not to any extent a consideration in money or money's worth.*

GROSS ESTATE—PROPERTY PASSING UNDER POWER OF APPOINTMENT

SEC. 811. [Part II, Subchapter A.] GROSS ESTATE.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

* * * * *

(f) **PROPERTY PASSING UNDER GENERAL POWER OF APPOINTMENT.**—To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of or intended to take effect in possession or enjoyment at or after his death, or (3) by deed under which he has retained for his life or any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession or enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth; and

* * * * *

(i) **TRANSFERS FOR INSUFFICIENT CONSIDERATION.**—If any one of the transfers, trusts, interests, rights, or powers, enumerated and described in subsections (c), (d), and (f) is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

* * * * *

SEC. 812. [Part II, Subchapter A.] NET ESTATE.

(b) (5) * * * For the purposes of this subchapter, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory

estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth".

* * * * *

SEC. 802. [Part I, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of non-residents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. * * *

SEC. 302. (f) Revenue Act of 1926 (as originally enacted). To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth; and * * *

SEC. 302. (f) Revenue Act of 1926 (as amended by section 803(b) of the Revenue Act of 1932). To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of or intended to take effect in possession or enjoyment at or after his death, or (3) by deed under which he has retained for his life or any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession or enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth; and * * *

SEC. 81.24 Property passing under general power of appointment.—Property passing under a general power of appointment must be included in the gross estate of the person exercising the power (known as the donee, or appointor), if the power is exercised by will. It should also be so included if the power is exercised by deed or other instrument either (1) in contemplation of death, (2) with the intent that the transfer shall take effect in possession or enjoyment at or after the death of the donee of the power, (3) with the retention or reservation by the decedent of the use, possession, right to the income, or other enjoyment of the transferred property, or (4) with the retention or reservation by the decedent of the right to designate the person or persons who shall possess or enjoy the transferred property or the income thereof. (For description of such transfers and the taxability thereof with reference to when made and when the death occurred, see sections 81.16, 81.17, 81.18, and 81.19.) The statute, however, does not require inclusion in the gross estate of the appointed property in the case of a bona fide sale thereof by the donee of the power for an adequate and full consideration in money or money's worth.

Only property passing under a general power should be included. Ordinarily a general power is one to appoint to any person or persons in the discretion of the donee of the power, or, however limited as to the persons or objects in whose favor the appointment may be made, is exercisable in favor of the donee, his estate, or his creditors. Duplicate copies of the instrument granting the power and of the instrument by which the power was exercised, one of each to be certified or verified, must be filed with Form 706 in all cases, unless the decedent was a nonresident, in which case only one copy of each instrument, certified or verified, is required. The copies must be filed even though it is contended that the power was a limited one and the property passing thereunder is not returned for tax.*

GROSS ESTATE—INSURANCE

SEC. 811. [Part II, Subchapter A.] GROSS ESTATE.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

* * * * *

(g) PROCEEDS OF LIFE INSURANCE.—To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over \$40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life.

* * * * *

SEC. 802. [Part I, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of nonresidents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. * * *

SEC. 81.25 Taxable insurance.—Section 811(g) of the Internal Revenue Code provides for the inclusion in the gross estate of insurance taken out by the decedent upon his own life, as follows: (a) All insurance receivable by, or for the benefit of, the estate; (b) all other insurance to the extent that it exceeds in the aggregate \$40,000.

The term "insurance" refers to life insurance of every description, including death benefits paid by fraternal beneficial societies operating under the lodge system. Insurance receivable by beneficiaries other than the estate is considered to have been taken out by the decedent where he paid, either directly or indirectly, all the premiums or other consideration wherewith the insurance was acquired, whether or not he made the application. Such insurance is not considered to have been so taken out, even though the application was made by the decedent, if no part of the premiums or other consideration was paid either directly or indirectly by him. Where a portion of the premiums

or other consideration was actually paid by another and the remaining portion by the decedent, either directly or indirectly, such insurance is considered to have been taken out by the latter in the proportion that the payments therefor made by him bear to the total amount paid for the insurance.

Life insurance not includible in the gross estate under the provisions of subsection (g) of section 811 and section 81.26, 81.27, or this section of these regulations may, depending upon the facts of the particular case, be includible under some other subsection of section 811 and the sections of these regulations pertaining thereto, such as subsection (c) in the case of insurance taken out by the decedent prior to January 10, 1941, the date of Treasury Decision 5032, and also transferred by him prior to such date in contemplation of death.*

SEC. 81.26 Insurance in favor of the estate.—The Internal Revenue Code requires the inclusion in the gross estate of all insurance receivable by the executor or administrator or payable to the decedent's estate, and all insurance which is in fact receivable by, or for the benefit of, the estate. It includes insurance effected to provide funds to meet the estate tax, and any other taxes, debts, or charges which are enforceable against the estate. The manner in which the policy is drawn is immaterial so long as there is an obligation, legally binding upon the beneficiary, to use the proceeds in payment of such taxes, debts, or charges. The full amount of the proceeds so receivable, without the benefit of any exemption, forms a part of the gross estate, though all the premiums or other consideration wherewith the insurance was acquired may have been paid by a person other than the decedent. If the decedent procured insurance in favor of another person or corporation as collateral security for a loan or other accommodation, the insurance is considered to be receivable for the benefit of the estate. The amount of the loan outstanding at decedent's death will be deductible in determining the net estate, and the interest thereon will be deductible in accordance with the provisions of section 81.36.*

SEC. 81.27 Insurance receivable by other beneficiaries.—The amount in excess of \$40,000 of the aggregate proceeds of all insurance on the decedent's life not receivable by or for the benefit of his estate must be included in his gross estate, as follows:

(a) To the extent to which such insurance was taken out by the decedent upon his own life (see section 81.25) after January 10, 1941, the date of Treasury Decision 5032, and

(b) To the extent to which such insurance was taken out by the decedent upon his own life (see section 81.25) on or before January 10, 1941, and with respect to which the decedent possessed any of the legal incidents of ownership at any time after

such date or, in the case of a decedent dying on or before such date, at the time of his death.

Legal incidents of ownership in the policy include, for example, the right of the insured or his estate to its economic benefits, the power to change the beneficiary, to surrender or cancel the policy, to assign it, to revoke an assignment, to pledge it for a loan, or to obtain from the insurer a loan against the surrender value of the policy, etc. The insured possesses a legal incident of ownership if his death is necessary to terminate his interest in the insurance, as, for example, if the proceeds would become payable to his estate, or payable as he might direct, should the beneficiary predecease him.

The estate is entitled to only one exemption of \$40,000 upon insurance receivable by beneficiaries other than the estate. For instance, if the decedent left life insurance otherwise includible under the provisions of this section and payable to three such beneficiaries in amounts of \$10,000, \$40,000, and \$50,000 (total, \$100,000), the full amount should be listed on the return and therefrom subtracted the \$40,000 exemption as provided in the appropriate schedule of Form 706. The word "beneficiaries," as used in reference to this \$40,000 exemption, means persons entitled to the actual enjoyment of the insurance money.

Example. Insurance on the life of the decedent who died after the date of Treasury Decision 5032 totaled \$200,000. It was payable to his son as beneficiary and the decedent never possessed any of the legal incidents of ownership therein. Premiums aggregating \$100,000 were paid for the insurance, of which the decedent paid \$50,000 before the date of Treasury Decision 5032 and \$30,000 after that date. The remaining premiums of \$20,000 were paid by the son. The extent to which the insurance was taken out by the decedent after the date of the Treasury decision is the proportion of \$200,000 that the amount of the premiums paid by him after such date, \$30,000, bears to the total amount of the premiums paid for the insurance, \$100,000. Such proportion is three-tenths of \$200,000, or \$60,000. As the decedent possessed none of the legal incidents of ownership in the insurance at any time after the date of the Treasury decision, \$100,000 of the insurance, the extent to which it was taken out by the decedent before such date $\left(\frac{50,000 \times \$200,000}{100,000}\right)$, is excluded from the gross estate. The amount of \$40,000, the extent to which the insurance was not taken out by the decedent $\left(\frac{20,000 \times \$200,000}{100,000}\right)$, is also excluded from the gross estate. The amount of the insurance taken out by the decedent after the date of the Treasury decision, \$60,000, is reduced

by \$40,000, the special insurance exemption, and the amount of the insurance included in the gross estate is \$20,000.*

SEC. 81.28 Valuation of insurance.—The amount to be returned if the policy is payable to or for the benefit of the estate is the amount receivable. If the proceeds of a policy are payable to a beneficiary other than the estate, and not to or for the benefit of the estate, the amount to be listed in the appropriate schedule of the return is the full amount receivable. (For taxable portion see section 81.27.) In case the proceeds of a policy are made payable to the beneficiary in the form of an annuity for life or for a term of years, there should be listed in the appropriate schedule of the return the one sum payable at death under an option which could have been exercised either by the insured or by the beneficiary, or if no option was granted, the sum used by the insurance company in determining the amount of the annuity.

With respect to each policy there should be filed a certificate, Form 712, from the insurance company showing the following:

- (a) The face amount of the policy.
- (b) The amount of any indebtedness to the company which reduced the amount otherwise payable.
- (c) The amount of accumulated dividends.
- (d) The amount of postmortem dividends.
- (e) Any other facts affecting the value. (See next paragraph.)
- (f) The value as of the date of death of the insured of the benefits payable under the policy.

In the case of any policy providing for deferred payments (other than payments measured by the facts disclosed under (a), (b), (c), and (d) above), the certificate should include the following information:

- (g) The provisions with respect to the deferred payments or to the installments.
- (h) The amounts of the deferred payments or installments.
- (i) If the number of installments to be paid may be measured by the life of any individual, the date of birth of such individual.
- (j) The amount applied by the insurance company as a single premium representing the purchase of the installment benefits.
- (k) The basis (Mortality Table and rate of interest) employed by the insurance company in valuing the installment benefits.*

GROSS ESTATE—RETROACTIVE PROVISIONS

SEC. 811. [Part II, Subchapter A.] GROSS ESTATE.

* * * * *

(h) **PRIOR INTERESTS.**—Except as otherwise specifically provided therein, subsections (b), (c), (d), (e), (f), and (g) shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquish-

ment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after February 26, 1926.

* * * * *

SEC. 802. [Part I, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of nonresidents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. * * *

DEDUCTIONS—ESTATES OF CITIZENS OR RESIDENTS ADMINISTRATION EXPENSES, CLAIMS, ETC.

SEC. 812. [Part II, Subchapter A.] NET-ESTATE.

For the purpose of the tax the value of the net estate shall be determined, in the case of a citizen or resident of the United States by deducting from the value of the gross estate—

- * * * * *
- (b) EXPENSES, LOSSES, INDEBTEDNESS, AND TAXES.—Such amounts—
- (1) for funeral expenses,
 - (2) for administration expenses,
 - (3) for claims against the estate,
 - (4) for unpaid mortgages upon, or any indebtedness in respect to, property where the value of decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate, and
 - (5) reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent,

as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or property taxes not accrued before his death, or any estate, succession, legacy, or inheritance taxes. The deduction herein allowed in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded upon a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth. There shall also be deducted losses incurred during the settlement of estates arising from fires, storms, shipwrecks, or other casualties, or from theft, when such losses are not compensated for by insurance or otherwise, and if at the time of the filing of the return such losses have not been claimed as a deduction for income tax purposes in an income tax return.

For the purposes of this subchapter, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth."

* * * * *

SEC. 935. [Subchapter B.] RATE OF TAX.

* * * * *

(c) For the purposes of this section the value of the net estate shall be determined as provided in subchapter A, except that in lieu of the exemption of \$100,000 provided in section 812(a), the exemption shall be \$40,000.

SEC. 81.29 Deduction of administration expenses, claims, etc.—In order to be deductible under the foregoing provisions of the Internal Revenue Code, the item must fall within one of the several classes of deductions specifically enumerated therein, and must also, except in the case of deductible losses during the administration of the estate, be one the payment of which out of the estate is authorized by the laws of the jurisdiction under which the estate is being administered. Unless both of these conditions exist the item is not deductible. If the item is not one of those described it is not deductible merely because payment is allowed by the local law. If the amount which may be expended for the particular purpose is limited by the local law no deduction in excess of such limitation is permissible. If a claim against the estate, an unpaid mortgage, or an indebtedness is founded upon a promise or agreement, the deduction therefor is limited to the extent that the liability was contracted bona fide and for an adequate and full consideration in money or money's worth. A relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, is not to any extent a consideration in money or money's worth.

An item may be entered on the return for deduction though the exact amount thereof is not then known, provided it is ascertainable with reasonable certainty, and will be paid. No deduction may be taken upon the basis of a vague or uncertain estimate. In the event the amount of the liability was unascertainable at the time of final audit of the return by the Commissioner, and, as a consequence, deduction was not allowed therefor in such audit, and subsequently the amount of the liability is ascertained, relief may be sought as provided by sections 81.73 and 81.96.*

SEC. 81.30 Effect of court decree.—The decision of a local court as to the amount of a claim or administration expense will ordinarily be accepted if the court passes upon the facts upon which deductibility depends. If the court does not pass upon such facts, its decree will, of course, not be followed. For example, if the question before the court is whether a claim should be allowed, the decree allowing it will ordinarily be accepted as establishing the validity and amount of the claim. The decree will not necessarily be accepted even though it purports to decide the facts upon which deductibility depends. It must appear that the court actually passed upon the merits of the case. This will be presumed in all cases of an active and genuine contest. If the result reached appears to be unrea-

sonable, this is some evidence that there was not such a contest, but it may be rebutted by proof to the contrary. If the decree was rendered by consent, it will be accepted, provided the consent was a bona fide recognition of the validity of the claim—not a mere cloak for a gift—and was accepted by the court as satisfactory evidence upon the merits. It will be presumed that the consent was of this character, and was so accepted, if given by all parties having an interest adverse to the claimant. The decree will not be accepted if it is at variance with the law of the State; as, for example, an allowance made to an executor in excess of that prescribed by statute.*

SEC. 81.31 Funeral expenses.—An executor may deduct such amounts for funeral expenses as are actually expended by him and, under the laws of the local jurisdiction, are payable out of the decedent's estate. A reasonable expenditure by the executor for a tombstone, monument, or mausoleum, or for a burial lot, either for the decedent or his family, may be deducted under this heading, provided such an expenditure is allowable by the local law. Included in funeral expenses is the cost of transportation of the person bringing the body to the place of burial.*

SEC. 81.32 Administration expenses.—The amounts deductible from the gross estate as "administration expenses" are such expenses as are actually and necessarily incurred in the administration of the estate; that is, in the collection of assets, payment of debts, and distribution among the persons entitled. The expenses contemplated in the law are such only as attend the settlement of an estate by the legal representative preliminary to the transfer of the property to individual beneficiaries or to a trustee, whether such trustee is the executor or some other person. Expenditures not essential to the proper settlement of the estate, but incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions. Administration expenses include (1) executor's commissions; (2) attorney's fees; and (3) miscellaneous expenses. Each of these classes is considered separately in sections 81.33 to 81.35, inclusive.*

SEC. 81.33 Executor's commissions.—The executor or administrator, in filing the return, may deduct his commissions in such an amount as has actually been paid, or in an amount which at the time of such filing it is reasonably expected will be paid, but no deduction may be taken if no commissions are to be collected. In case the amount of the commissions has not been fixed by decree of the proper court, the deduction will be allowed on the final audit of the return, provided: (1) That the Commissioner is reasonably satisfied that the commissions claimed will be paid; (2) that the amount entered as a deduction is within the amount allowable by the laws of the jurisdiction wherein

the estate is being administered; and (3) that it is in accordance with the usually accepted practice in said jurisdiction to allow such an amount in estates of similar size and character. If the deduction is disallowed in whole or in part on final audit, the disallowance will be subject to modification as the facts may later require. If the deduction is allowed in advance of payment and payment is thereafter waived, it shall be the duty of the executor to notify the Commissioner and to pay the resulting tax, together with interest. Executors should note that the commissions received as compensation for their services constitute taxable income and that the amounts received or receivable by them as such compensation are cross-referenced for income-tax purposes.

A bequest or devise to the executor in lieu of commissions is not deductible. If, however, the decedent fixed by his will the compensation payable to the executor for services to be rendered in the administration of the estate, deduction may be taken to the extent that the amount so fixed does not exceed the compensation allowable by the local law or practice.

Amounts paid as trustees' commissions do not constitute expenses of administration and are not deductible, whether received by the executor acting in the capacity of a trustee or by a separate trustee as such.*

SEC. 81.34 Attorney's fees.—The executor or administrator, in filing the return, may deduct such an amount of attorney's fees as has actually been paid, or in an amount which at the time of such filing it is reasonably expected will be paid. If on the final audit of a return the fees claimed have not been awarded by the proper court and paid, the deduction will, nevertheless, be allowed, provided the Commissioner is reasonably satisfied that the amount claimed will be paid and that it does not exceed a reasonable remuneration for the services rendered, taking into account the size and character of the estate and the local law and practice. If the deduction is disallowed in whole or in part on final audit, the disallowance will be subject to modification as the facts may later require.

Attorney's fees incurred by beneficiaries incident to litigation as to their respective interests do not constitute a proper deduction, inasmuch as expenses of this character are properly charged against the beneficiaries personally and are not administration expenses.*

SEC. 81.35 Miscellaneous administration expenses.—This includes such expenses as court costs, surrogates' fees, accountants' fees, appraisers' fees, clerk hire, etc. Expenses necessarily incurred in preserving and distributing the estate are deductible, including the cost of storing or maintaining property of the estate, if it is impossible to effect immediate distribution to the beneficiaries. Expenses for

preserving and caring for the property may not include outlays for additions or improvements; nor will such expenses be allowed for a longer period than the executor is required to retain the property. A brokerage fee for selling property of the estate is deductible if the sale is necessary in order to pay the decedent's debts, the expenses of administration, or to effect distribution. Other expenses attending the sale are deductible, such as the fees of an auctioneer, if it is reasonably necessary to employ one.*

SEC. 81.36 Claims against the estate.—The amounts that may be deducted under this heading are such only as represent personal obligations of the decedent existing at the time of his death, whether or not then matured, and interest thereon which had accrued at the time of death. Only interest accrued at the date of the decedent's death is allowable even though the executor, in accordance with the provisions of section 811(j) of the Internal Revenue Code, elects to have the gross estate valued as of a date or dates subsequent to the decedent's death. Only claims enforceable against the decedent's estate may be deducted. If the claim is founded upon a promise or agreement, the deduction therefor is limited to the extent that the liability was contracted bona fide and for an adequate and full consideration in money or money's worth. Thus, a pledge or a subscription, evidenced by a promissory note or otherwise, even though enforceable against the estate, is deductible only to the extent that liability therefor was contracted bona fide and for an adequate and full consideration in cash or its equivalent. Liabilities imposed by law or arising out of torts are deductible. See section 81.29 as to the relinquishment or promised relinquishment of dower and other marital interests.*

SEC. 81.37 Taxes.—The deduction for property taxes is limited to such taxes as accrued prior to the decedent's death. Property taxes must, in order to be deductible, constitute enforceable obligations of the decedent existing at the time of death.

Unpaid taxes upon income received during the decedent's lifetime are deductible but taxes upon income received after death are not deductible. No estate, succession, legacy, or inheritance tax is deductible.*

SEC. 81.38 Unpaid mortgages.—Deduction is allowed of the full unpaid amount of a mortgage upon, or of an indebtedness in respect of, any property of the gross estate, including interest which had accrued thereon at the time of death, provided the value of the property, undiminished by the amount of the mortgage or indebtedness, is returned as part of the value of the gross estate. If decedent's estate is liable for the amount of the mortgage or indebtedness, the

full value of the property subject to the mortgage or indebtedness must be included as part of the value of the gross estate; the amount of the mortgage or indebtedness being in such case allowed as a deduction. But if decedent's estate is not so liable, only the value of the equity of redemption (or value of the property, less the indebtedness) need be returned as part of the value of the gross estate. In no case may the deduction on account of the mortgage or indebtedness exceed the liability therefor contracted bona fide and for an adequate and full consideration in money or money's worth. Only interest accrued at the date of the decedent's death is allowable even though the executor, in accordance with the provisions of section 811(j) of the Internal Revenue Code, elects to have the gross estate valued as of a date or dates subsequent to the decedent's death. Inasmuch as real property situated outside of the United States does not form a part of the gross estate, no deduction may be taken of any mortgage thereon or any indebtedness in respect thereof.*

SEC. 81.39 Losses from casualties or theft.—There may be deducted under this heading losses incurred during the settlement of the estate arising from fires, storms, shipwrecks, or other casualties, or from theft, if such losses are not compensated for by insurance or otherwise. Such losses are not deductible if, at the time of the filing of the estate tax return, they have been claimed as a deduction for income tax purposes in an income tax return. If the loss is partly compensated for, the excess of the loss over such compensation may be deducted. Losses not of the nature described are not deductible. In order to be deductible a loss must occur during the settlement of the estate. If a loss with respect to an asset occurs after distribution thereof to the distributee it may not be deducted.*

SEC. 81.40 Support of dependents.—The support of dependents of the decedent during the settlement of the estate is deductible pursuant to the following rules:

(a) In order to be deductible, the allowance must be authorized by the laws of the jurisdiction in which the estate is being administered, and not in excess of what is reasonably required.

(b) The allowance for which deduction may be made is limited to support during the settlement of the estate. Any allowance for a more extended period is not deductible.

(c) There must be an actual disbursement from the estate to the dependents, but after payment has been made the right of deduction is not affected by the fact that the dependents do not expend the entire amount for their support during the settlement of the estate.*

DEDUCTIONS—PROPERTY PREVIOUSLY TAXED

SEC. 812. [Part II, Subchapter A.] NET ESTATE.

For the purpose of the tax the value of the net estate shall be determined, in the case of a citizen or resident of the United States by deducting from the value of the gross estate—

* * * * *

(c) (as amended by Joint Resolution, approved March 17, 1941, Public Law 18, Seventy-seventh Congress, effective as of February 11, 1939) **PROPERTY PREVIOUSLY TAXED.**—An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States, of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under chapter 4, or under Title III of the Revenue Act of 1932, 47 Stat. 245, or an estate tax imposed under this subchapter, the Revenue Act of 1926, 44 Stat. 69, or any prior Act of Congress, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate, and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this paragraph in respect of the property or property given in exchange therefor.

Where a deduction was allowed of any mortgage or other lien in determining the gift tax, or the estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under this paragraph shall be reduced by the amount so paid. The deduction allowable under this subsection shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under subsections (a), (b) and (d) as the amount otherwise deductible under this subsection bears to the value of the decedent's gross estate. Where the property referred to in this subsection consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction.

* * * * *

SEC. 935. [Subchapter B.] RATE OF TAX.

* * * * *

(c) For the purposes of this section the value of the net estate shall be determined as provided in subchapter A, except that in lieu of the exemption of \$100,000 provided in section 812(a), the exemption shall be \$40,000.

SEC. 81.41 Deduction of the value of transfers previously taxed.—If there is included in the decedent's gross estate property received by him by gift from any person within five years prior to his death, or received by gift, bequest, devise, or inheritance from any person

who died within five years prior to his death, or property acquired in exchange for property so received, the Internal Revenue Code authorizes a deduction in respect thereof, subject to the following conditions and limitations, namely:

(a) *Conditions.*—

(1) The property respecting which the deduction is sought must have been received by the decedent as a gift within five years prior to his death, or received by him by gift, bequest, devise, or inheritance from a prior decedent who died within five years of the decedent's death.

(2) The property must be identified either as the same property which the decedent so received or as property acquired in exchange therefor.

(3) The property must have formed a part of the gross estate, situated in the United States, of such prior decedent, or have been included in the total amount of the donor's gifts made within five years prior to the decedent's death.

(4) An estate tax by or on behalf of the estate of such prior decedent, or a gift tax by or on behalf of the donor, must have actually been paid (the mere filing of a return for such estate or donor not being sufficient).

(5) No such deduction, in respect of the property or property given in exchange therefor, must have been allowable in determining the value of the net estate of the prior decedent.

(b) *Limitations.*—

(1) The deduction is limited to the value of the property, or the aggregate value of such property if more than one item, as finally determined for the purpose of the gift tax or for the purpose of the prior estate tax, or to the value of such property or aggregate items thereof (or property acquired in exchange therefor) included in the decedent's gross estate, whichever is the lower.

(2) The deduction, as limited in (1), is reduced by the total amount paid prior to the decedent's death on any mortgage or other lien on the property previously taxed, provided such mortgage or other lien was deducted in determining the estate tax of the prior decedent or the gift tax of the donor.

(3) The deduction is further reduced on account of the deductions allowed under subsections (a), (b), and (d) of section 812. The amount of this further reduction is that proportion of such deductions which the amount otherwise deductible for property previously taxed bears to the value of the decedent's gross estate.

Property included in the total amount of gifts of a donor for the purpose of the gift tax and also included in the donee's gross estate

does not embrace any portion of the gifts excluded under the provisions of section 1003(b) of the Internal Revenue Code or corresponding provisions of prior gift tax statutes, and due allowance must be made for any such exclusions when computing the deduction for property previously taxed. For example: A donor gave his daughter a house and lot valued at \$24,000, of which only \$20,000 was included in the total amount of his gifts for the purpose of the gift tax. This property is included in the daughter's gross estate at a value of \$18,000. As only 20,000/24,000 of the property was included for the purpose of the gift tax, in accordance with the third condition previously set forth in this section, the amount of the property previously taxed which is also included in the daughter's gross estate is $20,000/24,000 \times \$18,000$ or \$15,000.

The application of this section may be illustrated by the following example:

Example. The decedent died June 15, 1940. The value of his gross estate for the purpose of the estate tax is \$1,000,000, of which \$200,000 is the value of insurance in excess of \$40,000 payable to beneficiaries other than the estate, \$600,000 is the value of property previously taxed, and \$200,000 is the value of stocks and bonds not so taxed. The property previously taxed was inherited from the decedent's father, who died on June 1, 1939. The tax on the father's estate was paid. The property previously taxed may be set forth as follows:

	Decedent's estate	Prior estate
Item 1.....	\$150,000	\$100,000
Item 2.....	40,000	85,000
Item 3.....	110,000	125,000
Item 4.....	130,000	120,000
Item 5.....	90,000	115,000
Item 6.....	80,000	50,000
Totals.....	600,000	595,000

Item 1, \$150,000, is specifically bequeathed to a charitable organization free of estate, inheritance, legacy, or succession taxes. Administration expenses and debts of the decedent amount to \$150,000. At the time of the father's death there was an unpaid mortgage of \$60,000 on item 5 which was deducted in determining the estate tax liability of the father's estate. This mortgage was entirely paid before the son's death.

The deduction for property previously taxed is limited to the aggregate value of the items constituting such property as finally determined in the case of the prior decedent or donor, or to the aggregate value of such property included in the decedent's gross estate, whichever is the lower. Accordingly, the amount of the deduction

for property previously taxed thus ascertained is \$595,000. In accordance with (b)(2) of this section this deduction is reduced by \$60,000, the amount paid in the discharge of the mortgage on item 5. The deduction thus reduced is \$535,000.

The deduction is further reduced by a proportionate amount computed under the provisions of (b)(3) of this section. As the amount of the specific exemption authorized by subchapter A is greater than the amount of the specific exemption authorized by subchapter B, the amount so computed in determining the deduction for the purpose of the basic tax imposed by subchapter A differs from the amount so computed in determining the deduction for the purpose of the additional tax imposed by subchapter B.

In this example the deductions, except for property previously taxed, amount to \$400,000, as follows: \$150,000 for the charitable bequest, \$150,000 for administration expenses and debts, and \$100,000 for the specific exemption authorized by subchapter A. The proportionate amount by which the deduction for property previously taxed is further reduced for the purpose of the basic tax imposed by subchapter A is ascertained by multiplying the above mentioned \$400,000 by 0.535, the ratio which the said \$535,000 bears to the value of the gross estate, \$1,000,000, and amounts to \$214,000. The difference between \$535,000 and \$214,000 is \$321,000, the amount in which the deduction for property previously taxed is allowable in determining the tax imposed by subchapter A. The total amount of the deductions, \$721,000, subtracted from the value of the gross estate, \$1,000,000, leaves a net estate of \$279,000, the transfer of which is subject to the tax imposed by subchapter A.

Subchapter B provides for a specific exemption of \$40,000. Accordingly, the deductions, other than the deduction for property previously taxed, allowable under that subchapter, amount to \$340,000, and 0.535 of that amount is \$181,900, the proportionate amount by which the deduction for property previously taxed is further reduced for the purpose of the additional tax. The difference between \$535,000 and \$181,900 is \$353,100, the amount in which the deduction for property previously taxed is allowable in determining the additional tax. The total amount of the deductions, \$693,100, subtracted from the value of the gross estate, \$1,000,000, leaves a net estate of \$306,900, the transfer of which is subject to the additional tax imposed by subchapter B.*

SEC. 81.42 Property originally received.—If the property originally received from a donor or prior decedent is included in the decedent's gross estate, the executor must describe it fully and prove its identity.*

SEC. 81.43 Property acquired in exchange.—The deduction for substituted property is not limited to property acquired by a single ex-

change of property received from the donor or the prior decedent, but extends to substituted property acquired by the process of exchange, whether through the medium of money or otherwise, irrespective of the number of conversions involved, including the proceeds of the sale or other disposition of property so received or acquired, as well as property acquired by purchase with the proceeds of the sale or other disposition of such property so long as such proceeds can be conclusively identified as such and clearly traced to the property originally so received.

The executor must describe and fully identify both the property originally received from the donor or the prior decedent and the substituted property for which deduction is claimed, giving the date and stating the nature of the transaction by which the substituted property was acquired, together with the name and address of the transferee. If the transaction was evidenced by written instrument of public record, precise reference to such record must be made, and if by instrument not of record, a verified copy thereof must be supplied. If there was no written instrument, there must be furnished the affidavit of one or more persons having personal knowledge of the matter, setting forth the facts in connection therewith.

The burden of identifying property as acquired in exchange for property included in the gross estate of the prior decedent for Federal estate tax purposes rests upon the executor.*

DEDUCTIONS—TRANSFERS FOR PUBLIC, CHARITABLE, RELIGIOUS, ETC., USES

SEC. 812. [Part II, Subchapter A.] NET ESTATE.

For the purpose of the tax the value of the net estate shall be determined, in the case of a citizen or resident of the United States by deducting from the value of the gross estate—

* * * * *

(d) TRANSFERS FOR PUBLIC, CHARITABLE, AND RELIGIOUS USES.—The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children

or animals. If the tax imposed by section 810, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes. The amount of the deduction under this subsection for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

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SEC. 935. [Subchapter B.] RATE OF TAX.

* * * * *

(c) For the purposes of this section the value of the net estate shall be determined as provided in subchapter A, except that in lieu of the exemption of \$100,000 provided in section 812(a), the exemption shall be \$40,000.

SEC. 81.44 Transfers for public, charitable, religious, etc., uses.—Deduction may be taken of the value of all property transferred by will or by the decedent in his lifetime not to exceed the value of the transferred property required to be included in the gross estate if in either case the property was transferred (1) to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes; or (2) to or for the use of any corporation or association organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals), if no part of the net earnings of the corporation or association inures to or is payable to or for the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; or (3) to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, if such transfers, legacies, bequests, or devises are to be used by such trustee, trustees, fraternal society, order, or association exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

If a trust is created for both a charitable and a private purpose, deduction may be taken of the value of the beneficial interest in favor of the former only insofar as such interest is presently ascertainable, and hence severable from the interest in favor of the private use. Section 81.10 indicates the principles to be applied in the computation of the present worth of deferred uses, but such computation will not be made by the Commissioner on behalf of the executor. Thus, if money or property is placed in trust to pay the income to

an individual during his life, or for a term of years, and then to pay or deliver the principal to the charitable corporation, or to apply it to a charitable purpose, the present value of the remainder is deductible. To determine the present value of such remainder, use the appropriate factor in column 3 of Table A or B of section 81.10. If the present worth of a remainder bequeathed for a charitable use is dependent upon the termination of more than one life, or in any other manner rendering inapplicable Table A or B of section 81.10, the claim for the deduction must be supported by a full statement, in duplicate, of the computation of the present worth made, in accordance with the principle set forth in section 81.10, by one skilled in actuarial computations.

The deduction is not limited, in the estates of citizens or residents, to transfers to domestic corporations or associations, or to trustees for use within the United States.

If under the terms of the will, or the law of the jurisdiction wherein the estate is administered, or the law of the jurisdiction imposing the particular tax, the Federal estate tax, or any estate, succession, legacy, or inheritance tax is payable in whole or in part out of any bequest, legacy, or devise deductible under section 812(d), the sum deductible is the amount of such bequest, legacy, or devise so reduced. Thus, if \$50,000 is bequeathed for a charitable purpose and is subjected to a State inheritance tax of \$5,000, the amount deductible is \$45,000; or if a life estate is bequeathed to an individual with remainder over to a charitable corporation, and by the local law the legacy tax upon the life estate is taken out of the corpus with the result that the charitable corporation will be entitled to receive only the amount of the fund less the tax, the deduction is limited to the present worth, as of the date of the testator's death, of the remainder of the fund so reduced; or if the testator bequeaths his residuary estate, or a portion thereof, to charity, and his will contains a direction that certain inheritance taxes, otherwise payable from legacies in respect of which they were laid, shall be payable out of such residuary estate, the deduction may not exceed the bequest to charity thus reduced pursuant to the direction of the will; or if a residuary estate, or a portion thereof, be bequeathed to charity, and by the local law the Federal estate tax is payable out of the residuary estate, the deduction may not exceed that portion of the residuary estate bequeathed to charity as reduced by the Federal estate tax. The statute in effect provides that the deduction shall be based on the amount actually available for charitable uses, that is, the amount of the fund remaining after the payment of all death taxes. The return should fully disclose the computation of the amount to be deducted. If such amount is dependent upon the amount of any death

tax which has not been paid before the filing of the return, Form 706, there should be submitted with the return a computation of such tax.

If as the result of a controversy involving a charitable bequest or devise, the charitable organization assigns or surrenders a part thereof pursuant to a compromise agreement in settlement of such controversy, the amount so assigned or surrendered is not deductible as a bequest or devise to such charitable organization.*

SEC. 81.45 Religious, charitable, scientific, and educational corporations.—A corporation or association to which a transfer for a religious, charitable, scientific, or educational purpose was made must meet four tests: (1) It must be organized and operated for one or more of the specified purposes; (2) it must be organized and operated exclusively for such purposes; (3) no part of its net earnings shall inure to or be paid to or for the benefit of private stockholders or individuals; and (4) no substantial part of its activities shall be carrying on propaganda, or otherwise attempting, to influence legislation.

The estate is not deprived of the right to deduct the value of property so transferred by reason of the fact that private individuals are the recipients of the benefits which the corporation or association dispenses. Such right is, however, lost if any part of the net earnings of the corporation or association inures to or is payable to or for the benefit of a private stockholder or individual.*

SEC. 81.46 Conditional bequests.—If as of the date of decedent's death the transfer to charity is dependent upon the performance of some act or the happening of a precedent event in order that it might become effective, no deduction is allowable unless the possibility that charity will not take is so remote as to be negligible. If an estate or interest has passed to or is vested in charity at the time of decedent's death and such right or interest would be defeated by the performance of some act or the happening of some event which appeared to have been highly improbable at the time of decedent's death, the deduction is allowable.

If the legatee, devisee, donee, or trustee is empowered to divert the property or fund, in whole or in part, to a use or purpose which would have rendered it, to the extent that it is subject to such power, not deductible had it been directly so bequeathed, devised, or given by the decedent, deduction will be limited to that portion, if any, of the property or fund which is exempt from an exercise of such power.*

SEC. 81.47 Proof required.—In establishing the right of the estate to this deduction, the executor must submit:

(a) Duplicate copies of the will of the decedent, and of the order admitting the will to probate, one copy of each of which should be certified, if the deduction is claimed of property transferred by such will. Duplicate copies of any instrument in writing by which the

decedent made a transfer of property in his lifetime the value of which is required by the statute to be included in his gross estate, if the deduction is claimed of property so transferred. If the instrument is of record one copy thereof should be certified, and if not of record, one copy should be verified. The certified or verified copy should be forwarded by the collector to the Commissioner.

(b) An affidavit by the executor stating whether any action has been instituted to have interpreted or to contest the will or any provision thereof affecting the charitable deduction claimed and whether, according to his information and belief, any such action is designed or contemplated.

(c) Such other documents or evidence as may be requested by the Bureau.*

SPECIFIC EXEMPTION

SEC. 812. [Part II, Subchapter A.] NET ESTATE.

For the purpose of the tax the value of the net estate shall be determined, in the case of a citizen or resident of the United States by deducting from the value of the gross estate—

(a) EXEMPTION.—An exemption of \$100,000;

* * * * *

SEC. 935. [Subchapter B.] RATE OF TAX.

* * * * *

(c) For the purposes of this section the value of the net estate shall be determined as provided in subchapter A, except that in lieu of the exemption of \$100,000 provided in section 812(a), the exemption shall be \$40,000.

SEC. 81.48 **Specific exemption.**—A specific exemption should be deducted in determining the net estate of a citizen or resident of the United States. The specific exemption deductible in determining the net estate upon which the basic tax is imposed by section 810 of the Internal Revenue Code (subchapter A) is \$100,000. The specific exemption deductible in determining the net estate of a citizen or resident upon which the additional tax is imposed by section 935 of the Internal Revenue Code (subchapter B) is \$40,000. No specific exemption is authorized in the case of the estate of a nonresident not a citizen.*

ESTATES OF NONRESIDENTS NOT CITIZENS

SEC. 862. [Part III, Subchapter A.] PROPERTY WITHIN THE UNITED STATES.

For the purpose of this subchapter—

(a) STOCK IN DOMESTIC CORPORATION.—Stock in a domestic corporation owned and held by a nonresident not a citizen of the United States shall be deemed property within the United States; and

(b) REVOCABLE TRANSFERS AND TRANSFERS IN CONTEMPLATION OF DEATH.—Any property of which the decedent has made a transfer,

by trust or otherwise, within the meaning of section 811 (c) or (d), shall be deemed to be situated in the United States, if so situated either at the time of the transfer, or at the time of the decedent's death.

SEC. 863. [Part III, Subchapter A.] PROPERTY WITHOUT THE UNITED STATES.

The following items shall not, for the purpose of this subchapter, be deemed property within the United States:

(a) **PROCEEDS OF LIFE INSURANCE.**—The amount receivable as insurance upon the life of a nonresident not a citizen of the United States; and

(b) **BANK DEPOSITS.**—Any moneys deposited with any person carrying on the banking business, by or for a nonresident not a citizen of the United States who was not engaged in business in the United States at the time of his death.

SEC. 850. [Part II, Subchapter A.] MISSIONARIES IN FOREIGN SERVICE.

Missionaries duly commissioned and serving under boards of foreign missions of the various religious denominations in the United States, dying while in the foreign missionary service of such boards, shall not, by reason merely of their intention to permanently remain in such foreign service, be deemed nonresidents of the United States, but shall be presumed to be residents of the State, the District of Columbia, or the Territories of Alaska or Hawaii wherein they respectively resided at the time of their commission and their departure for such foreign service.

SEC. 851. [Part II, Subchapter A.] CITIZENS WITH ESTATES IN CHINA.

The term "resident" as used in this subchapter includes a citizen of the United States with respect to whose property any probate or administration proceedings are had in the United States Court for China.

SEC. 81.49 Gross estate.—The gross estate of a nonresident not a citizen is made up in the same way as that of a citizen or resident of the United States. For computation of the net estate of a nonresident not a citizen, see section 81.51. For meaning of the terms "residents" and "nonresidents," and of the presumption applying as to the residence of missionaries, see section 81.5.*

SEC. 81.50 Situs of property.—Real estate, tangible personal property, and the written evidence of intangible personal property which is treated as being the property itself are within the United States if physically situated therein. For example, a bond for the payment of money is not within the United States unless physically situated therein. Stock of a domestic corporation, however, constitutes property within the United States, irrespective of where the certificates thereof are physically located.

Intangible personal property the written evidence of which is not treated as being the property itself constitutes property within the United States if consisting of a property right issuing from or enforceable against a resident of the United States or a domestic corporation (public or private), if not subject to the exceptions pre-

scribed in section 863 (a) and (b). Under the provisions of that section the amount receivable as insurance upon the life of a decedent who was a nonresident not a citizen, and moneys deposited by or for such a decedent, who was not engaged in business in the United States at the time of his death, with any person carrying on the banking business, shall not be deemed property within the United States.

Property of which the decedent has made a transfer taxable under the provisions of section 81.15 is deemed to be situated in the United States if so situated either at the time of the transfer or at the time of the decedent's death. (See sections 81.15 to 81.21, inclusive.)*

DEDUCTIONS—ESTATES OF NONRESIDENTS NOT CITIZENS

SEC. 861. [Part III, Subchapter A.] NET ESTATE.

(a) DEDUCTIONS ALLOWED.—For the purpose of the tax the value of the net estate shall be determined, in the case of a nonresident not a citizen of the United States, by deducting from the value of that part of his gross estate (determined as provided in section 811), which at the time of his death is situated in the United States.—

(1) EXPENSES, LOSSES, INDEBTEDNESS, AND TAXES.—That proportion of the deductions specified in subsection (b) of section 812 which the value of such part bears to the value of his entire gross estate, wherever situated.

(2) (as amended by Joint Resolution, approved March 17, 1941, Public Law 18, Seventy-seventh Congress, effective as of February 11, 1939) PROPERTY PREVIOUSLY TAXED.—An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under chapter 4, or under Title III of the Revenue Act of 1932, 47 Stat. 245, or an estate tax imposed under this subchapter, the Revenue Act of 1926, 44 Stat. 69, or any prior Act of Congress, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in that part of the decedent's gross estate which at the time of his death is situated in the United States, and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this paragraph in respect of the property or property given in exchange therefor. Where a deduction was allowed of any mortgage or other lien in determining the gift tax, or the estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable

under this paragraph shall be reduced by the amount so paid. The deduction allowable under this paragraph shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under paragraphs (1) and (3) of this subsection as the amount otherwise deductible under this paragraph bears to the value of that part of the decedent's gross estate which at the time of his death is situated in the United States. Where the property referred to in this paragraph consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction.

(3) TRANSFERS FOR PUBLIC, CHARITABLE, AND RELIGIOUS USES.—The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used within the United States by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. If the tax imposed by section 860, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

(b) CONDITION OF ALLOWANCE OF DEDUCTIONS.—No deduction shall be allowed in the case of a nonresident not a citizen of the United States unless the executor includes in the return required to be filed under section 864 the value at the time of his death of that part of the gross estate of such nonresident not situated in the United States.

SEC. 935. [Subchapter B.] RATE OF TAX.

* * * * *

(c) For the purposes of this section the value of the net estate shall be determined as provided in subchapter A, * * *.

SEC. 81.51 Net estate.—The Internal Revenue Code imposes the tax upon the transfer of only the portion of the estate of a nonresident not a citizen that was situated in the United States. In determining the net estate, the deductions specifically authorized for this

class of cases may be taken from the portion of the gross estate situated in the United States.*

SEC. 81.52 Deductions of administration expenses, claims, etc.—In estates of nonresidents not citizens, deductions from the gross estate may be taken, subject to the limitations set forth in sections 81.29 to 81.40, inclusive, and to the limitations hereinafter stated, for the following: Funeral expenses; administration expenses; claims against the estate; unpaid mortgages; losses incurred during the settlement of the estate arising from fires, storms, shipwrecks, or other casualties, or from theft, if such losses are not compensated for by insurance or otherwise; and amounts reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent. It is immaterial whether the amounts to be deducted were incurred or expended within or without the United States, but certain limitations are imposed which do not apply to estates of residents or citizens, namely:

(a) Only that proportion of the aggregate thereof is deductible which the value of that part of the gross estate situated (within the meaning of the statute) in the United States, bears to the value of the entire gross estate, wherever situated. (See section 81.55.)

(b) No deduction whatever may be taken unless the executor includes in the return the value of that part of the gross estate not situated in the United States. Such part of the gross estate must be valued as of the date of the decedent's death; or, if the option authorized by section 811(j) is exercised, such part must be valued in accordance with the provisions of section 81.11.

In order that the Bureau may properly pass upon the items claimed as deductions, the executor should submit a certified copy of the schedule of liabilities, claims against the estate, and expenses of administration filed under the foreign death-duty act; or, if no such schedule was filed, a certified copy of the schedule of such liabilities, claims, and expenses filed with the foreign court in which administration was had; or, if items of deduction allowable under section 861(a)(1) were not included in either such schedule, or if no such schedules were filed, then the affidavit of the foreign executor setting forth the facts relied upon as entitling the estate to the benefit of the particular deduction or deductions.*

SEC. 81.53 Deduction of the value of property previously taxed.—The right to deduct the value of property received by a decedent who was a nonresident not a citizen by gift from any person within five years prior to his death, or by gift, bequest, devise, or inheritance from any person who died within five years prior to his death, or the value of property acquired in exchange for property so received, is governed by the same rules as those applying to estates of citizens or residents

(sections 81.41 to 81.43, inclusive), subject to the three following exceptions:

(1) The deduction is not available to any extent unless the executor includes in the return the value of that part of the gross estate not situated in the United States. Such part of the gross estate must be valued as of the date of the decedent's death; or, if the option authorized by section 811(j) is exercised, such part must be valued in accordance with the provisions of section 81.11.

(2) The property for which the deduction is claimed must be included in that part of the gross estate situated in the United States at the time of the decedent's death.

(3) Instead of the amount of the deduction being reduced in accordance with the third limitation set forth under section 81.41(b), the amount of the deduction is reduced by the proportion of the total other deductions, allowed under paragraphs (1) and (3) of subsection (a) of section 861, which the amount otherwise deductible for property previously taxed bears to the value of the part of the gross estate situated in the United States at the time of the decedent's death.*

SEC. 81.54 Deduction of value of transfers for public, charitable, religious, etc., uses.—The right to deduct the value of property transferred by nonresidents not citizens for public, religious, charitable, scientific, literary, or educational purposes is governed by the same rules as those applying to estates of citizens or residents (sections 81.44 to 81.47, inclusive), subject, however, to the two following exceptions:

(a) The right is limited to transfers to corporations and associations created or organized in the United States, or to trustees for use within the United States.

(b) The right is available only if the executor includes in the return the value of that part of the gross estate not situated in the United States. Such part of the gross estate must be valued as of the date of the decedent's death; or, if the option authorized by section 811(j) is exercised, such part must be valued in accordance with the provisions of section 81.11.

Instead of duplicate copies of the documents specified in section 81.47, only one copy is required to be filed.*

SEC. 81.55 Determination of net estate.—The following example will show the manner of determining the net estate of a nonresident not a citizen. The gross estate, wherever situated, amounts to \$1,000,000, of which \$200,000 represents the value of the property having its situs within the United States (the term "United States" including not only the several States, but also the Territories of Alaska and Hawaii, and the District of Columbia). The funeral expenses, administration expenses, and claims against the estate aggregate \$150,000, and there

are charitable bequests, for use within the United States, amounting to \$25,000. Hence the property situated within the United States constitutes 20 per cent of the entire gross estate wherever situated, and a like percentage of the \$150,000 is \$30,000. The following result is accordingly obtained:

Gross estate within the United States.....	\$200,000
20 per cent of \$150,000.....	\$30,000
Charitable bequests for use within the United States.....	25,000
	<hr/> 55,000
Net estate.....	145,000

For the manner of computing the tax on the net estate, see section 81.7.*

SEC. 81.56 Payment of tax.—The provisions relating to credits (see sections 81.8 and 81.9) and to rates and payment of the tax are the same in estates of nonresidents not citizens and of residents or citizens. The Internal Revenue Code provides that the executor shall pay the tax. If there is no executor or administrator appointed, qualified, and acting within the United States, every person in either the actual or constructive possession of any property of the decedent is constituted by the Internal Revenue Code as executor for the purpose of tax payment, and is liable for the tax to the extent of the property so in his possession. (See sections 81.75 to 81.82, inclusive.) All checks, drafts, or money orders should be made payable to the order of the collector of internal revenue.*

PRELIMINARY NOTICE—ESTATES OF CITIZENS OR RESIDENTS

SEC. 820. [Part II, Subchapter A.] EXECUTOR'S NOTICE.

The executor, within two months after the decedent's death, or within a like period after qualifying as such, shall give written notice thereof to the collector.

SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, except that in the case of a citizen or resident of the United States a return shall be required if the value of the gross estate at the time of decedent's death exceeds the amount of the specific exemption provided in section 935(c).

SEC. 935. [Subchapter B.] RATE OF TAX.

* * * * *

(c) For the purposes of this section the value of the net estate shall be determined as provided in subchapter A, except that in lieu of the exemption of \$100,000 provided in section 812(a), the exemption shall be \$40,000.

SEC. 81.57 When notice required.—A preliminary notice is required to be filed in the case of every citizen or resident whose gross estate exceeded \$40,000 in value at the date of death. The value of the gross estate at the date of death governs with respect to the filing of the notice regardless of whether the value of the gross estate is, at the executor's election, finally determined as of a date subsequent to the date of death pursuant to the provisions of section 811(j). The notice must be filed in duplicate within two months after the decedent's death or within two months after the executor has qualified. In the case of a resident, it must be filed with the collector in whose district the decedent had his domicile at the time of death. In the case of a nonresident citizen, it must be filed with the collector in whose district the gross estate in the United States was situated; or, if the gross estate in the United States was situated in more than one district, or, if no part of the gross estate was situated in the United States, it must be filed with the collector for the second district of New York, or with such collector as the Commissioner may designate. If there is doubt as to whether the gross estate exceeded \$40,000, the notice should be filed as a matter of precaution in order to avoid the possibility of penalties attaching.*

SEC. 81.58 Notice by executor or administrator.—The duly qualified executor or administrator is required to file such preliminary notice on Form 704, copies of which may be obtained from the collector, within two months after qualifying as such, if notice has not already been filed. The primary purpose of the notice is to advise the Government of the existence of taxable estates, and filing should not be delayed beyond the two months' period because of uncertainty as to the exact value of the assets. The filing of the notice within the prescribed period is mandatory, and the estimate of the gross estate called for by the notice should be the best approximation of value which can be made within the time allowed. The instructions upon the back of the form should be read carefully before executing the notice. The signature of one executor or administrator upon Form 704 is sufficient. For penalties for delinquency in filing notice, or for filing a false or fraudulent notice, see sections 81.88, 81.89, and 81.91.*

SEC. 81.59 Notice by others than duly qualified executor or administrator.—The term "executor" embraces any person in actual or constructive possession of any property of the decedent at or after the time of the latter's death, if within two months after the decedent's death no executor or administrator qualifies. The notice on Form 704 must be filed by such persons in every case in which an executor or administrator has not duly qualified within such period. If,

within the period mentioned, an executor or administrator qualifies, the duty of filing the notice devolves upon him, and all other persons are relieved therefrom.*

PRELIMINARY NOTICE—ESTATES OF NONRESIDENTS NOT CITIZENS

SEC. 820. [Part II, Subchapter A.] EXECUTOR'S NOTICE.

The executor, within two months after the decedent's death, or within a like period after qualifying as such, shall give written notice thereof to the collector.

SEC. 802. [Part I, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of nonresidents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. * * *

SEC. 81.60 Estates of nonresidents not citizens; preliminary notice.—In estates of nonresidents not citizens, notice on Form 705, copies of which may be obtained from the Commissioner of Internal Revenue, Washington, D. C., or from any collector of internal revenue, is required if any part of the gross estate was situated (see section 81.50) in the United States. The notice must be filed, in duplicate, by every appointed, qualified, and acting executor or administrator within the United States with the collector of internal revenue of the district in which such part of the gross estate was situated, or, if such part of the gross estate was situated in more than one district, it must be filed with the collector for the second district of New York or with such collector as the Commissioner may designate. The notice is necessary if any part of the decedent's gross estate was situated, within the meaning of the statute, in the United States, regardless of the value of that part of the entire gross estate. If no executor or administrator has qualified, notice must be filed within two months after the date of death by every person in either the actual or constructive possession of any property of the decedent so within the United States at or after the time of his death. If such person has no knowledge of the decedent's death within two months following its occurrence, he should file the notice immediately upon obtaining such knowledge. The term "person in actual or constructive possession of any property of the decedent" (section 930) includes, among others, the decedent's agents and representatives; safe-deposit companies, warehouse companies, and other custodians of property in this country; brokers holding, as collateral, securities belonging to the decedent or investment funds owned by the decedent, and debtors of the decedent in this country. As to any moneys deposited by or for a decedent of this class with any person, corporation, or association carrying on the banking business, no notice is

required, unless, however, the decedent was engaged in business in the United States at the time of his death.*

SEC. 81.61 Information return by corporation or transfer agent.—Upon notification from the Bureau of Internal Revenue a corporation (organized or created in the United States), or its transfer agent will be required to file a return disclosing the following information pertaining to stocks or bonds registered in the name of a nonresident decedent (regardless of citizenship): (1) Name of decedent as registered; (2) date of death, residence, place of death, and names and addresses of executors, attorneys, or other representatives, within and without the United States, if known; and (3) a description of the securities and the number of shares or bonds and the par values. Treasury Department Form 714, which will be supplied by the Bureau upon request, may be used for the return.*

SEC. 81.62 Transfer certificates.—Certificates permitting the transfer of property of nonresident decedents (regardless of citizenship) without liability will be issued by the Commissioner when he is satisfied that the tax imposed upon the estate, if any, has been fully discharged or provided for. The tax will be considered fully discharged for the purpose of the issuance of a transfer certificate only when investigation has been completed and payment of the tax, including any deficiency finally determined, has been made. If the tax liability has not been fully discharged transfer certificates may be issued permitting the transfer of particular items of property without liability upon the filing with the Commissioner of such security as he may require. No domestic corporation or its transfer agent should transfer stock registered in the name of a nonresident decedent without first requiring a transfer certificate covering all of the decedent's stock of the corporation and showing that such transfer may be made without liability. Banks, trust companies, and others in actual or constructive possession of property of nonresident decedents should require transfer certificates before transferring such property. However, a transfer certificate need not be required for bonds owned by a decedent who was a nonresident not a citizen if it is known that such bonds were not physically situated in the United States at the time of death. Corporations, transfer agents, banks, trust companies, or other custodians can insure avoidance of liability for tax and penalties only by demanding and receiving transfer certificates, as herein provided, prior to transfer of property of nonresident decedents.

The requirements of this and the preceding section do not apply if there is an executor or administrator appointed, qualified, and acting within the United States.*

THE RETURN—ESTATES OF CITIZENS OR RESIDENTS

SEC. 821. [Part II, Subchapter A.] RETURNS.

(a) REQUIREMENT.—

(1) RETURNS BY EXECUTOR.—In all cases where the gross estate at the death of a citizen or resident exceeds the amount of the specific exemption provided in section 812(a), the executor shall make a return under oath in duplicate, setting forth (1) the value of the gross estate of the decedent at the time of his death; (2) the deductions allowed under section 812; (3) the value of the net estate of the decedent as defined in section 812; and (4) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

(2) RETURNS BY BENEFICIARIES.—If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate.

(3) CROSS REFERENCE.—

For provision requiring a return where the gross estate exceeds \$40,000, see section 937.

(b) TIME FOR FILING.—The return required of the executor under subsection (a) shall be filed at such times and in such manner as may be required by regulations made pursuant to law.

(c) PLACE FOR FILING.—The return required of the executor under subsection (a) shall be filed with the collector of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner.

SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, except that in the case of a citizen or resident of the United States a return shall be required if the value of the gross estate at the time of decedent's death exceeds the amount of the specific exemption provided in section 935(c).

SEC. 935. [Subchapter B.] RATE OF TAX.

* * * * *

(c) For the purposes of this section the value of the net estate shall be determined as provided in subchapter A, except that in lieu of the exemption of \$100,000 provided in section 812(a), the exemption shall be \$40,000.

SEC. 81.63 When return required; date of filing.—A return on Form 706 is required in the case of every citizen or resident, whose gross estate, as defined in the statute, exceeded \$40,000 in value at

the date of death. The duty to file a return depends upon the value of the gross estate on the date of the decedent's death, regardless of any valuation as of a subsequent time that the executor may use by virtue of his election under subsection (j) of section 811, since such election may be made only upon the return. In the case of a resident, the return must be filed with the collector in whose district the decedent had his domicile at the time of death. In the case of a nonresident citizen, it must be filed with the collector in whose district the gross estate in the United States was situated; or, if the gross estate in the United States was situated in more than one district, or, if no part of the gross estate was situated in the United States, it must be filed with the collector for the second district of New York, or with such collector as the Commissioner may designate. The return on Form 706 must be filed in duplicate within 15 months after the date of death. The due date is the day of the fifteenth calendar month after the decedent's death numerically corresponding to the day of the calendar month in which death occurred, except that, if there is no numerically corresponding day in such fifteenth month, the last day of such fifteenth month is the due date. For example, if the decedent died on August 31, 1939, the due date is November 30, 1940. If the due date for filing the return falls on a Sunday or on a legal holiday, the due date for filing will be the day following such Sunday or legal holiday. If placed in the mails the return should be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the date on which the return is required to be filed. If a return is made and placed in the mails in due course, properly addressed, and postage paid, in ample time to reach the office of the collector on or before the due date, the filing will not be regarded as delinquent should the return not be actually received by such officer until subsequent to that date. As to penalty for failure to file the return within the time prescribed, see section 81.89. As to loss of the option to have the property valued as of a date or dates subsequent to the decedent's death by failing to file the return within the time prescribed, see section 81.11.*

SEC. 81.64 Persons liable for return.—The Internal Revenue Code provides that the duly qualified executor or administrator shall file the return. If there is more than one executor or administrator, the return must be made jointly by all. If no executor or administrator has been appointed, every person in actual or constructive possession of any property of the decedent is constituted by the Internal Revenue Code an executor for the purposes of the tax (section 930), and is required to make and file a return as provided by section 821. If, in any case, the executor is unable to make a complete return as to any part of the gross estate, he is required to give all the informa-

tion he has as to such property, including a full description, and the name of every person holding a legal or beneficial interest in the property. If the executor is unable to make a return as to any property, the Internal Revenue Code requires that every person holding a legal or beneficial interest therein shall, upon notice from the collector, make return as to such part of the gross estate. For penalties for delinquency in filing return, or for filing a false or fraudulent return, see sections 81.88, 81.89, and 81.91.*

SEC. 81.65 Preparation of return.—The return must be made on Form 706, copies of which will be supplied by the collector upon application. It must be filed in duplicate under oath and contain an itemized inventory by schedule of the property constituting the gross estate and lists of the deductions under the appropriate schedules. The return must set forth (1) the value of the gross estate (see sections 81.10–81.28), (2) the deductions allowed (see sections 81.29–81.48), (3) the value of the net estate, and (4) the tax paid or payable thereon. The return must set forth (1) both the net estate determined in accordance with the provisions of subchapter A imposing the basic tax and the net estate for the purposes of the additional estate tax imposed by subchapter B and (2) the basic tax, the additional tax, and, when applicable, the defense tax. The amount payable upon the return is the total of the net basic and net additional taxes, unless the decedent died after June 25, 1940, and before September 21, 1941. If the decedent died within such period, the total tax payable is the total of such net taxes plus the defense tax. The instructions printed on the form should be carefully followed. All documents and vouchers used in preparing the return should be retained by the executor so as to be available for inspection whenever required. Duplicate copies of the will, if the decedent died testate, one of which should be certified, must be submitted with the return, together with copies of such other documents as are required in Form 706 and in the applicable sections of these regulations. There may also be filed in duplicate copies of any documents which the executor may desire to submit with the return in explanation thereof.

In every case of an estate of a nonresident citizen, the executor should file the following documents with the return: (1) A copy of the inventory of property and the schedule of liabilities, claims against the estate and expenses of administration filed with the foreign court of probate jurisdiction, certified by a proper official of such court; and (2) a copy of the return filed under the foreign inheritance, estate, legacy, or succession tax act, certified by a proper official of the foreign tax department, if the estate is subject to such a foreign tax.*

SEC. 81.66 Supplemental data.—The Internal Revenue Code provides that the executor, in addition to filing notice and return, shall

furnish such supplemental data as may be necessary to establish the correct tax (section 821). It is therefore the duty of the executor to furnish upon request copies of any documents in his possession relating to the estate, or on file in any court having jurisdiction over the estate, appraisal lists of any items included in the gross estate, copies of balance sheets or other financial statements relating to the value of stock, and any other information obtainable by him that may be found necessary in the determination of the tax. Failure to comply with such a request will render the executor liable to penalties (section 81.90), and proceedings may be instituted in the proper court of the United States to secure compliance therewith (section 3633(a)).

Persons having possession or control of any records or documents containing or supposed to contain any information concerning the estate, or having knowledge or information of any fact or facts of a material bearing upon the liability, or the extent of liability, of the estate to the tax, shall, upon request of the Commissioner or any revenue agent or inspector designated by him for that purpose, make disclosure thereof. Failure on the part of any person to comply with such request will render him liable to penalties (section 81.90), and compliance with the request may be enforced in the proper court of the United States (section 3633(a)).*

THE RETURN—ESTATES OF NONRESIDENTS NOT CITIZENS

SEC. 864. [Part III, Subchapter A.] RETURNS.

(a) REQUIREMENT.—

(1) RETURNS BY EXECUTOR.—In the case of the estate of every nonresident not a citizen of the United States any part of whose gross estate is situated in the United States, the executor shall make a return under oath in duplicate, setting forth (1) the value of that part of the gross estate of the decedent situated in the United States at the time of his death; (2) the deductions allowed under section 861; (3) the value of the net estate of the decedent as defined in section 861; (4) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

(2) RETURNS BY BENEFICIARIES.—If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate.

(b) TIME FOR FILING.—The return required of the executor under subsection (a) shall be filed at such times and in such manner as may be required by regulations made pursuant to law.

(c) PLACE FOR FILING.—The return required of the executor under subsection (a) shall be filed with the collector of the district in which

is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of such district as may be designated by the Commissioner.

SEC. 865. CROSS REFERENCE.

For missionaries in foreign service, see section 850.

SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, * * *.

SEC. 81.67 Return of estates of nonresidents not citizens.—A return on Form 706, copies of which may be obtained from the Commissioner of Internal Revenue, Washington, D. C., or from any collector of internal revenue, is required in the case of every nonresident not a citizen any part of whose gross estate was situated (see section 81.50) in the United States. The return must set forth an itemized list of that part of the gross estate situated in the United States and the total value thereof (see section 81.51), the deductions claimed, if any (see sections 81.52–81.54), the value of the net estate (see section 81.55), and the tax paid or payable thereon. The return must set forth the basic tax imposed by subchapter A (section 860), the additional tax imposed by subchapter B (section 935), and, if the decedent died after June 25, 1940, and before September 21, 1941, the defense tax imposed by subchapter C, as added by the Revenue Act of 1940. The return must be filed with the collector of internal revenue of the district in which such part of the gross estate was situated, or, if such part of the gross estate was situated in more than one district, it must be filed with the collector for the second district of New York, or with such collector as the Commissioner may designate. The return must be filed in duplicate and under oath within 15 months from the date of death, unless an extension is obtained pursuant to section 81.69 or 81.70. If the due date for filing the return falls on a Sunday or on a legal holiday, the due date for filing will be the day following such Sunday or legal holiday. If placed in the mails the return should be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the date on which the return is required to be filed. If a return is made and placed in the mails in due course, properly addressed, and postage paid, in ample time to reach the office of the collector on or before the due date, the filing will not be regarded as delinquent should the return not be actually received by such officer until subsequent to that date. As to penalty for failure to file the return within the time prescribed, see section 81.89. As to loss of the option to have the

property valued as of a date or dates subsequent to the decedent's death by failing to file the return within the time prescribed, see section 81.11. The return should be made and filed by the executor or administrator appointed, qualified, and acting within the United States, or, if none, then by any person in actual or constructive possession of any property of the decedent situated in the United States, whatever its value. If the qualified executor or administrator is unable to make a complete return as to any part of the gross estate, he is required to give all the information available to him as to such part, including a description thereof and the name of every person holding a legal or beneficial interest therein. As to the meaning of the term "person in actual or constructive possession of any property of the decedent," see section 81.60.*

SEC. 81.68 Supplemental data.—Pursuant to the provisions of section 864(a) (1), with respect to furnishing supplemental data, if the decedent is a nonresident not a citizen, the executor is required to file with the return:

(a) A certified copy of the will, if decedent died testate, or, if the decedent left several wills to govern in different jurisdictions, a certified copy of each will.

(b) If any deductions are claimed, a copy of the inventory of property filed under the foreign death-duty act; or, if no such inventory was filed, a certified copy of the inventory filed with the foreign court of probate jurisdiction.

The Commissioner may require the documents specified in paragraph (b) regardless of whether deductions are claimed. For requirements dealing with the duty to furnish other documents or information relating to the tax liability of the estate, and penalties in connection therewith, see section 81.66.*

EXTENSION OF TIME FOR FILING RETURN

SEC. 3634. [Chapter 34.] EXTENSION OF TIME FOR FILING RETURNS.

If the failure to file a return (other than a return of income tax) or list at the time prescribed by law or by regulation made under authority of law is due to sickness or absence, the collector may allow such further time, not exceeding thirty days, for making and filing the return or list as he deems proper.

SEC. 81.69 Extension of time by collector.—In case of sickness or absence, collectors are authorized to grant an extension of time for filing the return for a period not in excess of 30 days from the due date. No such extension of time may be granted unless the application therefor is received by the collector prior to the expiration of the period for which the extension is requested and authorized. An extension of time for filing the return does not in itself operate to extend the time for the payment of the tax, which is due and payable

15 months after the date of death. For extension of time of payment, see section 81.79.*

SEC. 81.70 Extension of time by Commissioner.—In case it is impossible for the executor to file a reasonably complete return within 15 months from the date of death, the Commissioner may, upon written application submitted on or prior to the due date showing good and sufficient cause, grant an extension of time not to exceed 3 months from the due date. Before the expiration of the extension period granted a return as complete as possible must be filed. The return thus filed will be the return required by section 821(a)(1) or 864(a)(1) and any tax shown thereon will be the “amount determined by the executor as the tax” referred to in section 822(a)(2), or the “amount shown as the tax by the executor upon his return” referred to in section 870(1). Such return cannot thereafter be amended, although supplemental information may subsequently be filed that may result in a finally determined tax different from the amount shown as the tax by the executor upon his return. An extension of time for filing the return does not operate to extend the time for payment of the tax, which is due 15 months after the date of death. An extension of time in which to make payment of the tax may be secured as provided in section 81.79.*

DETERMINATION OF TAX BY COMMISSIONER

SEC. 824. [Part II, Subchapter A.] EXAMINATION OF RETURN AND DETERMINATION OF TAX.

As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax.

SEC. 825. [Part II, Subchapter A.] DISCHARGE OF EXECUTOR FROM PERSONAL LIABILITY.

(a) **APPLICATION FOR DISCHARGE.**—If the executor makes written application to the Commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Commissioner (as soon as possible, and in any event within one year after the making of such application, or, if the application is made before the return is filed, then within one year after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in sections 874 and 875) shall notify the executor of the amount of the tax. The executor, upon payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

(b) **CROSS REFERENCE.**—

For continuance of lien upon the gross estate after discharge of executor, see section 827(c).

SEC. 802. [Part I, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of nonresidents

not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. * * *

SEC. 81.71 Examination of return and determination of tax by the Commissioner.—As soon as practicable after returns are filed, they will be examined and the amount of the tax determined by the Commissioner under such procedure as he may from time to time prescribe.

If the executor makes written application to the Commissioner for a determination of the tax and discharge from personal liability therefor, the Commissioner will, within one year after receipt of such application, or if the application is made before the return is filed then within one year after the return is filed, notify the executor of the amount of the tax, and upon payment thereof, the executor will be discharged from personal liability for any deficiency in the tax thereafter found to be due.*

SEC. 81.72 Authorization of attorneys and others required.—If an attorney or other person asks a ruling on a question of law arising in a specific case, the Commissioner will require satisfactory evidence of the right to obtain such ruling. Hypothetical questions cannot be answered.

In all cases in which information is sought regarding an estate, or an interview is asked, by an attorney or by an agent of the executor or administrator, the information or interview will be denied unless the attorney or agent presents a duly executed power of attorney from the executor or administrator authorizing the attorney or agent to act in his behalf. Powers of attorney should be filed in the office of the internal revenue agent in charge in which the case is under consideration.

No attorney or agent will be recognized as representing an estate or executor unless such attorney or agent is enrolled to represent claimants or others before the Treasury Department. For regulations governing enrollment, reference should be made to Treasury Department Circular No. 230, as revised, copies of which may be obtained upon application to the Secretary of the Committee on Practice, Treasury Department, Washington, D. C.*

DEFICIENCY TAX

SEC. 870. [Part IV, Subchapter A.] DEFINITION OF DEFICIENCY.

As used in this subchapter in respect of the tax imposed by this subchapter the term "deficiency" means—

(1) The amount by which the tax imposed by this subchapter exceeds the amount shown as the tax by the executor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the executor upon his return, or if no return is made by the executor, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax.

SEC. 871. [Part IV, Subchapter A.] PROCEDURE IN GENERAL.

(a) (1) PETITION TO BOARD OF TAX APPEALS.—If the Commissioner determines that there is a deficiency in respect of the tax imposed by this subchapter, the Commissioner is authorized to send notice of such deficiency to the executor by registered mail. Within 90 days after such notice is mailed (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day), the executor may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this subchapter and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the executor, nor until the expiration of such 90-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3653(a) the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

* * * * *

(e) INCREASE OF DEFICIENCY AFTER NOTICE MAILED.—The Board shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the executor, and to determine whether any additional amount or addition to the tax should be assessed, if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) FURTHER DEFICIENCY LETTERS RESTRICTED.—If the Commissioner has mailed to the executor notice of a deficiency as provided in subsection (a), and the executor files a petition with the Board within the time prescribed in such subsection, the Commissioner shall have no right to determine any additional deficiency, except in the case of fraud, and except as provided in subsection (e) or section 872(c). If the executor is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered, for the purposes of this subsection or of subsection (a), or of section 911, as a notice of a deficiency, and the executor shall have no right to file a petition with the Board of Tax Appeals based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a).

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SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be

subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, except that in the case of a citizen or resident of the United States a return shall be required if the value of the gross estate at the time of decedent's death exceeds the amount of the specific exemption provided in section 935(c).

SEC. 3760. [Chapter 36.] CLOSING AGREEMENTS.

(a) **AUTHORIZATION.**—The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commissioner) is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any taxable period.

(b) **FINALITY.**—If such agreement is approved by the Secretary, the Under Secretary, or an Assistant Secretary, within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) The case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

SEC. 81.73 Deficiency, petitions, and closing agreements.—Section 870 by its definition of the word “deficiency” provides a term which will apply to any amount of tax determined to be due in excess of the amount of tax reported by the executor, or in excess of the amount reported by the executor as adjusted by way of prior assessments, abatements, refunds, or collections without assessment. In defining the term “deficiency” section 870 recognizes two classes of cases—one, in which the executor makes a return showing some tax liability; the other, in which the executor makes a return showing no tax liability, or in which the executor fails to make a return. Additional tax, resulting from supplemental information filed after the return has been filed, is a deficiency within the meaning of the Internal Revenue Code.

When a case is considered for the first time, the deficiency is the excess of the amount determined to be the correct amount of the tax over the amount shown as the tax by the executor on his return, or, if it is a case in which no tax was reported by the executor, the deficiency is the amount determined to be the correct amount of the tax. Subsequent information sometimes discloses that the amount previously determined to be the correct amount of the tax is less than the correct amount, and that a redetermination of the tax is necessary. In such a case the deficiency on redetermination is the excess of the amount determined to be the correct amount of the

tax over the sum of the amount of tax reported by the executor and the deficiency assessed in connection with the previous determination. If it is a case in which no tax was reported by the executor, the deficiency is the excess of the amount determined to be the correct amount of the tax over the amount of the deficiency disclosed by the previous determination. If the previous determination resulted in a refund to the executor, the deficiency upon the second determination is the excess of the amount determined to be the correct amount of the tax over the amount of tax reported by the executor decreased by the amount of the tax refunded.

In all cases in which a deficiency in respect of a tax (including penalties or other additions to the tax provided by law) is determined by the Commissioner, a notice thereof will be sent to the executor by registered mail in accordance with the provisions of section 871(a) of the Internal Revenue Code even though a jeopardy assessment (see section 81.74) is made. If, subsequent to the mailing of such notice, a jeopardy assessment is made in respect of the deficiency to which such notice relates no subsequent notice will be sent to the executor by the Commissioner, but if such jeopardy assessment is made, and the amount thereof is in excess of the deficiency to which the notice relates, the Commissioner will mail a notice to the executor as required by section 871(a) of the determination of such additional deficiency provided no petition has theretofore been filed with the Board of Tax Appeals. If a deficiency is determined in respect of the basic tax imposed by subchapter A, the additional tax imposed by subchapter B, and the defense tax imposed by subchapter C (effective between June 25, 1940, and September 21, 1941), notice of all such deficiencies may be incorporated in the same communication.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) after the mailing of the registered letter notifying him of the final determination of a deficiency by the Commissioner, the executor may file a petition with the Board of Tax Appeals for a redetermination of the deficiency, other than a deficiency resulting from the correction of a mathematical error appearing upon the return.

The executor and the Commissioner (or any officer or employee authorized by the Commissioner), subject to approval by the Secretary, the Under Secretary, or an Assistant Secretary of the Treasury, may, under the provisions of section 3760, enter into a closing agreement in writing relating to the tax liability of the estate which will be final and conclusive except upon a showing of fraud or malfeasance, or misrepresentation of a material fact.*

ASSESSMENT OF TAX

SEC. 3640. [Chapter 35.] ASSESSMENT AUTHORITY.

The Commissioner is authorized and required to make the inquiries, determinations, and assessments of all taxes and penalties imposed by this title, or accruing under any former internal revenue law, where such taxes have not been duly paid by stamp at the time and in the manner provided by law.

SEC. 822. [Part II, Subchapter A.] PAYMENT OF TAX.

(a) TIME OF PAYMENT.—

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(2) EXTENSION OF TIME.—Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part not to exceed ten years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, and the running of the statute of limitations for assessment and collection, as provided in section 874, shall be suspended for the period of any such extension. If an extension is granted, the Commissioner may, if he deems it necessary, require the executor to furnish security for the payment of the amount in respect of which the extension is granted in accordance with the terms of the extension.

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SEC. 871. [Part IV, Subchapter A.] PROCEDURE IN GENERAL.

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(b) COLLECTION OF DEFICIENCY FOUND BY BOARD.—If the executor files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the decision of the Board which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

(c) FAILURE TO FILE PETITION.—If the executor does not file a petition with the Board within the time prescribed in subsection (a) the deficiency, notice of which has been mailed to the executor, shall be assessed, and shall be paid upon notice and demand from the collector.

(d) WAIVER OF RESTRICTIONS.—The executor shall at any time have the right, by a signed notice in writing filed with the Commissioner, to waive the restrictions provided in subsection (a) on the assessment and collection of the whole or any part of the deficiency.

(e) INCREASE OF DEFICIENCY AFTER NOTICE MAILED.—The Board shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the executor, and to determine whether any additional amount or addition to the tax should be assessed, if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) **FURTHER DEFICIENCY LETTERS RESTRICTED.**—If the Commissioner has mailed to the executor notice of a deficiency as provided in subsection (a), and the executor files a petition with the Board within the time prescribed in such subsection, the Commissioner shall have no right to determine any additional deficiency, except in the case of fraud, and except as provided in subsection (e) or section 872(c). If the executor is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered, for the purposes of this subsection or of subsection (a), or of section 911, as a notice of a deficiency, and the executor shall have no right to file a petition with the Board of Tax Appeals based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a).

(g) **FINAL DECISIONS OF BOARD.**—For the purposes of this subchapter the date on which a decision of the Board becomes final shall be determined according to the provisions of section 1140.

(h) **EXTENSION OF TIME FOR PAYMENT OF DEFICIENCY.**—Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner, under regulations prescribed by the Commissioner, with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax), may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of four years. If an extension is granted, the Commissioner may require the executor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. In such case the running of the statute of limitations for assessment and collection, as provided in section 874, shall be suspended for the period of any such extension.

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SEC. 872. [Part IV, Subchapter A.] JEOPARDY ASSESSMENTS.

(a) **AUTHORITY FOR MAKING.**—If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall immediately assess such deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) and notice and demand shall be made by the collector for the payment thereof.

(b) **DEFICIENCY LETTERS.**—If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 871(a), then the Commissioner shall mail a notice under such subsection within 60 days after the making of the assessment.

(c) **AMOUNT ASSESSABLE BEFORE DECISION OF BOARD.**—The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the executor, despite the provisions of section 871(f) and whether or not the executor has theretofore filed a petition with the Board of Tax Appeals. The Com-

missioner may, at any time before the decision of the Board is rendered, abate such assessment, or any unpaid portion thereof, to the extent that he believes the assessment to be excessive in amount. The Commissioner shall notify the Board of the amount of such assessment, or abatement, if the petition is filed with the Board before the making of the assessment or is subsequently filed, and the Board shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) **AMOUNT ASSESSABLE AFTER DECISION OF BOARD.**—If the jeopardy assessment is made after the decision of the Board is rendered such assessment may be made only in respect of the deficiency determined by the Board in its decision.

(e) **EXPIRATION OF RIGHT TO ASSESS.**—A jeopardy assessment may not be made after the decision of the Board has become final or after the executor has filed a petition for review of the decision of the Board.

(f) **BOND TO STAY COLLECTION.**—When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in section 892 or 893(b) (4). If any portion of the jeopardy assessment is abated by the Commissioner before the decision of the Board is rendered, the bond shall, at the request of the taxpayer, be proportionately reduced.

(g) **SAME—FURTHER CONDITIONS.**—If the bond is given before the executor has filed his petition with the Board under subsection (a) of section 871, the bond shall contain a further condition that if a petition is not filed within the period provided in such subsection, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subsection.

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(i) **COLLECTION OF UNPAID AMOUNTS.**—When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

SEC. 874. [Part IV, Subchapter A.] PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION.

(a) **GENERAL RULE.**—Except as provided in subsection (b) the amount of estate taxes imposed by this subchapter shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of three years after the return was filed.

(b) **EXCEPTIONS.**—

(1) **FALSE RETURN OR NO RETURN.**—In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(2) **COLLECTION AFTER ASSESSMENT.**—Where the assessment of any tax imposed by this subchapter has been made within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the executor.

SEC. 875. [Part IV, Subchapter A.] SUSPENSION OF RUNNING OF STATUTE.

The running of the statute of limitations provided in section 874 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under section 871(a)) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, except that in the case of a citizen or resident of the United States a return shall be required if the value of the gross estate at the time of decedent's death exceeds the amount of the specific exemption provided in section 935(c).

SEC. 81.74 Assessments.—In any case in which the Commissioner believes that the assessment or collection of a deficiency tax will be jeopardized by delay, he will make an immediate assessment thereof. In such case the assessment may be made before the mailing of the notice provided by section 871(a), or at any time thereafter prior to the filing of a petition for a review by the court of a decision rendered by the Board. If the jeopardy assessment is made subsequent to a decision of the Board, then the assessment is limited to the amount of the deficiency determined by the Board. If the jeopardy assessment is made before any notice in respect of the deficiency to

which the jeopardy assessment relates has been mailed under subsection (a) of section 871, the Commissioner will mail a notice as provided by such subsection within 60 days after the making of such jeopardy assessment. The Commissioner may, at any time before the decision of the Board is rendered, abate such an assessment or any portion thereof, to the extent that he believes it to be excessive in amount.

If an amount of tax in excess of that shown upon the return is determined to be due as a result of the correction of a mathematical error appearing upon the face of the return, the executor will be duly notified and an assessment made of the tax which would have been the correct tax but for the mathematical error. The notice that the correct amount of the tax has been assessed will not be a notice within the meaning of subsection (a) of section 871 or section 911 and the executor has no right to file a petition with the Board of Tax Appeals based upon such notice.

If a petition is filed with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final will be assessed, except such portion as may have been assessed as a jeopardy assessment and not abated. If no petition is filed with the Board within the time prescribed in section 871(a), the deficiency, notice of which has been mailed to the executor, will be assessed. If the executor by a signed notice in writing filed with the Commissioner waives the restrictions on the assessment and collection of the whole or any part of the deficiency, assessment of such whole or part will be made immediately. (As to payment, see sections 81.75 to 81.82, inclusive.)

All assessments against executors (as to assessments against transferees and fiduciaries, see section 81.102), except in the case of a false or fraudulent return, or of a failure to file a return within the time required by law, must be made within three years after the return was filed. If notice of a deficiency is mailed in accordance with the provisions of subsection (a) of section 871, then the running of the statute of limitations on assessment of any deficiency shall be suspended for the period during which the Commissioner is prohibited from making the assessment (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter. If an extension of time for payment of tax is granted in accordance with section 822(a)(2) or section 871(h), then the running of the statute of limitations on assessment shall be suspended for the time covered by such extension.

In case of a false or fraudulent return with intent to evade the tax, or of a failure to file a required return, the tax may be assessed,

or proceedings in court for collection may be begun without assessment, at any time.*

PAYMENT OF AND RECEIPTS FOR TAXES

SEC. 822. [Part II, Subchapter A.] PAYMENT OF TAX.

(a) TIME OF PAYMENT.—

(1) GENERAL RULE.—The tax imposed by this subchapter shall be due and payable fifteen months after the decedent's death.

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(b) LIABILITY FOR PAYMENT.—The tax imposed by this subchapter shall be paid by the executor to the collector.

SEC. 871. [Part IV, Subchapter A.] PROCEDURE IN GENERAL.

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(b) COLLECTION OF DEFICIENCY FOUND BY BOARD.—If the executor files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. * * *

(c) FAILURE TO FILE PETITION.—If the executor does not file a petition with the Board within the time prescribed in subsection (a) the deficiency, notice of which has been mailed to the executor, shall be assessed, and shall be paid upon notice and demand from the collector.

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SEC. 823. [Part II, Subchapter A.] DUPLICATE RECEIPTS.

The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

SEC. 3656. [Chapter 36.] PAYMENT BY CHECK.

(a) CERTIFIED CHECKS.—

(1) AUTHORITY TO RECEIVE.—It shall be lawful for collectors to receive for internal revenue taxes certified checks drawn on national and state banks and trust companies during such time and under such regulations as the Secretary may prescribe.

(2) DISCHARGE OF LIABILITY.—

(A) CHECK DULY PAID.—No person who may be indebted to the United States on account of internal revenue taxes who shall have tendered a certified check or checks as provisional payment for such taxes, in accordance with the terms of this subsection, shall be released from the obligation to make ultimate payment thereof until such certified check so received has been duly paid.

(B) CHECK UNPAID.—If any such check so received is not duly paid by the bank on which it is drawn, and so certifying, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for the amount of such check upon all the assets of such bank; and such amount shall be paid out of its assets in preference to any or all other claims whatsoever against

said bank, except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank.

(b) UNCERTIFIED CHECKS.—

(1) **AUTHORITY TO RECEIVE.**—Collectors may receive uncertified checks in payment of income, war profits, and excess profits taxes, and any other taxes payable other than by stamp, during such time and under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe.

(2) **ULTIMATE LIABILITY.**—If a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions to the same extent as if such check had not been tendered.

SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, except that in the case of a citizen or resident of the United States a return shall be required if the value of the gross estate at the time of decedent's death exceeds the amount of the specific exemption provided in section 935(c).

SEC. 81.75 Payment of tax; general.—The tax is due and must be paid within 15 months from the date of death unless an extension of time for payment thereof has been granted by the Commissioner. (See also section 81.79.) If the tax is due 15 months after the decedent's death, the due date is the day of the fifteenth calendar month after his death numerically corresponding to the day of the calendar month on which death occurred, except that, if there is no numerically corresponding day in such fifteenth month, the last day of such fifteenth month is the due date. For example, if the decedent died on August 31, 1939, the due date is November 30, 1940. No discount will be allowed for payment in advance of the due date. The collector will grant to the person paying the tax duplicate receipts, either of which will be sufficient evidence of such payment and entitle the executor to be credited with the amount by any court having jurisdiction to audit or settle his accounts.

Following an investigation of the return, the tax liability will be determined by the Commissioner. If the amount of tax shown on the return has been paid and exceeds the amount of tax as determined, a certificate of overassessment will be prepared and issued, regardless of whether or not a claim for refund of such excess payment is filed unless refundment of such excess is barred by the statute of limitations, or such excess is otherwise not refundable, as in the case of a compromise (see section 81.98), a closing agreement:

(see section 81.73) conclusively fixing the amount of tax liability, or an estoppel. If the amount of tax as determined exceeds the amount of tax already paid but is less than the amount shown on the return, the executor will be notified of the amount of the unpaid tax and payment thereof should be made to the collector. If the audit of the return does not disclose a deficiency tax or overpayment the executor will be notified to that effect. If, as a result of the audit of the return, a deficiency in respect of the tax is finally determined and such deficiency is in whole or in part assessed (see section 81.74), the executor should pay the amount of the deficiency assessed upon notice and demand from the collector, except in the case a stay of the collection of a jeopardy assessment is obtained by the filing of a bond (see section 81.93), or an extension of time for payment is granted (see section 81.80). Until the tax, including any deficiency, is finally determined, the executor should reserve a sufficient portion of the estate to satisfy the liability.*

SEC. 81.76 The executor shall pay the tax.—The Internal Revenue Code provides that the executor shall pay the tax. This duty applies to the entire tax, regardless of the fact that the gross estate consists in part of property which will not come into his possession. If there is no duly qualified executor or administrator, all persons in actual or constructive possession of any property of the decedent are liable for and required to pay the tax to the extent of the value of such property. (See section 930(a).) As to the personal liability of the executor, see section 81.99.*

SEC. 81.77 Payment by check.—Collectors may accept uncertified checks in payment of the tax, provided such checks are collectible at par, that is, for the full amount, without any deduction for exchange or other charges. The collector will stamp upon the face of each check before deposit thereof the words "This check is in payment of an obligation to the United States and must be paid at par. No protest." This should be followed by his name and title. The day on which the check is received will be considered the date of payment so far as the taxpayer is concerned, unless the check is returned dishonored. If the bank on which a check is drawn should refuse to pay it at par, the check should be returned through the depository bank.

All expenses incident to the attempt to collect such a check and the return of it through the depository bank must be paid by the drawer of the check to the bank on which it is drawn. (See section 3971 of the Internal Revenue Code.) In case a check has been returned uncollected by the depository bank, the collector should proceed to collect the tax as though no check had been given, and the taxpayer will remain liable for payment of the tax and for all interest, legal penalties, and additions, if any attach, to the same ex-

tent as though such check had not been tendered. A taxpayer who tenders a certified check in payment of the tax is not released from his obligation until the check has been paid.

Treasury Department Circular No. 176, as amended, prescribes detailed regulations governing the deposit and collection of checks. Collectors are referred to paragraphs 13-16 and paragraph 26 thereof as to the deposit of taxpayers' checks and the handling of uncollected or lost items.*

SEC. 81.78 Payment with bonds or notes of the United States.—Payment of the tax may be made with certain bonds of the United States in accordance with section 14 of the Second Liberty Bond Act, as amended (U. S. C., 1940 edition, Title 31, section 765), and Department Circular 225, as amended and supplemented, issued pursuant thereto. Such bonds must bear interest at a higher rate than 4 per cent per annum, and are receivable at par value, together with interest accrued at the time of payment, provided they were owned by the decedent continuously for at least six months prior to the date of his death, and upon such date constituted a part of his gross estate.

With respect to payment of tax with United States Treasury notes, the latest Treasury decision pertaining thereto should be consulted. (See Appendix.)*

EXTENSION OF TIME FOR PAYMENT OF TAX

SEC. 822. [Part II, Subchapter A.] PAYMENT OF TAX.

(a) TIME OF PAYMENT.—

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(2) **EXTENSION OF TIME.**—Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part not to exceed ten years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, and the running of the statute of limitations for assessment and collection, as provided in section 874, shall be suspended for the period of any such extension. If an extension is granted, the Commissioner may, if he deems it necessary, require the executor to furnish security for the payment of the amount in respect of which the extension is granted in accordance with the terms of the extension.

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SEC. 925. [Part IV, Subchapter A.] PERIOD OF EXTENSION.

Where there is included in the value of the gross estate the value of a reversionary or remainder interest in property, the payment of the part of the tax imposed by this subchapter attributable to such interest may, at the election of the executor, be postponed until six months after the termination of the precedent interest or interests in the property, and the amount the payment of which is so postponed

shall then be payable, together with interest thereon at the rate of 4 per centum per annum from eighteen months after the date of the decedent's death until such amount is paid.

SEC. 926. [Part IV, Subchapter A.] REQUIREMENTS FOR EXTENSION.

The postponement of payment of such amount shall be under such regulations as the Commissioner with the approval of the Secretary may prescribe, and shall be upon condition that the executor, or any other person liable for the tax, shall furnish a bond in such an amount, and with such sureties, as the Commissioner deems necessary, conditioned upon the payment within six months after the termination of such precedent interest or interests of the amount the payment of which is so postponed, together with interest thereon, as provided in section 925.

SEC. 927. [Part IV, Subchapter A.] CREDIT FOR STATE DEATH TAXES.

Such part of any estate, inheritance, legacy, or succession taxes allowable as a credit against the tax imposed by this subchapter as is attributable to such reversionary or remainder interest may be allowed as a credit against the tax attributable to such interest, subject to the percentage limitation contained in section 813(b), if such part is paid, and credit therefor claimed, at any time prior to the expiration of 60 days after the termination of the precedent interest or interests in the property.

SEC. 871. [Part IV, Subchapter A.] PROCEDURE IN GENERAL.

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(h) **EXTENSION OF TIME FOR PAYMENT OF DEFICIENCY.**—Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner, under regulations prescribed by the Commissioner, with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax), may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of four years. If an extension is granted, the Commissioner may require the executor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. In such case the running of the statute of limitations for assessment and collection, as provided in section 874, shall be suspended for the period of any such extension.

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SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, except that in the case of a citizen or resident of the United States a return shall be required if the value of the gross estate at the time of decedent's death exceeds the amount of the specific exemption provided in section 935(c).

SEC. 81.79 (a) **Extension of time for payment of tax shown on return.**—In any case in which the Commissioner finds that payment, on the due date, of any part of the tax shown on the return would impose undue hardship upon the estate, he may extend the time for payment thereof for a period or periods not to exceed in all 10 years from the due date.

The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the estate. It must appear that substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the estate from making payment of the tax at the due date. If a market exists, a sale of property at the current market price is not ordinarily considered as resulting in an undue hardship.

An application for such an extension must be in writing and must contain, or be supported by, information under oath showing the undue hardship that would result to the estate if the requested extension were refused. The application, with the supporting information, must be filed with the collector, who will transmit it to the Commissioner with his recommendations as to the extension. When it is received by the Commissioner, it will be examined, and, if possible, within 30 days will be denied, granted, or tentatively granted subject to certain conditions of which the executor will be notified. The Commissioner will not consider an application for such an extension unless request therefor is made to the collector on or before the due date. If the executor desires to obtain an additional extension, the request therefor must be made to the collector on or before the date of the expiration of the previous extension. No single extension for more than one year will be granted. The granting of an extension of time for paying the tax is discretionary with the Commissioner, and such authority will be exercised under such conditions as he may deem advisable.

If an extension is granted, the Commissioner may, if he deems it necessary, require the executor to furnish security for the payment of the amount in respect of which the extension is granted in accordance with the terms of the extension.

The amount of the tax for which an extension is granted, with the additions thereto, shall be paid on or before the expiration of the period of the extension without the necessity of notice and demand from the collector. Payment of the amount for which the extension was granted and the additions thereto before the expiration of the extension will not relieve the executor from paying the entire amount of interest provided for in the extension.

The granting of such an extension will not relieve the executor from the duty of filing the return on or before the date fixed by the regulations, nor will it operate to prevent the running of interest.

(See section 81.81.) An extension of time to pay the tax may extend the period within which taxes allowed as a credit by section 813(b) are required to be paid and the credit therefor claimed. (See section 81.9.) The running of the statute of limitations for assessment and collection, as provided in section 874, is suspended for the period of the extension. (See sections 81.74 and 81.102.)

(b) **Extension of time for payment of tax attributable to a reversionary or remainder interest.**—In case there is included in the gross estate a reversionary or remainder interest in property, the payment of the part of the tax attributable to such interest may, at the election of the executor, be postponed until six months after the termination of the precedent interest or interests in the property. This provision is limited to cases in which the reversionary or remainder interest is included in the decedent's gross estate as such and does not extend to cases in which the decedent creates future estates by his own testamentary act.

Notice of the exercise of the election to postpone the payment of the tax attributable to a reversionary or remainder interest should be filed with the Commissioner before the date prescribed for payment of the tax. There should be filed with the notice of election a certified copy of the will or other instrument under which the reversionary or remainder interest was created. The Commissioner may require the submission of such additional proof as is deemed necessary to disclose the complete facts. If the duration of the precedent interest is dependent upon the life of any person, the application must show the date of birth of such person.

As a prerequisite to the postponement of the payment of the tax attributable to a reversionary or remainder interest, a bond must be furnished in such an amount (at least double the amount of the tax and interest for the estimated duration of the precedent interest), and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the tax and interest accrued thereon within six months after the termination of the precedent interest. In case the duration of the precedent interest is dependent upon the life or lives of any person or persons, or is otherwise indefinite, the bond must be further conditioned upon the principal or surety promptly notifying the Commissioner when such precedent interest terminates and upon the principal or surety notifying the Commissioner during the month of September of each year as to the continuance of the precedent interest. If after the acceptance of a bond it is determined that the amount of the tax attributable to the reversionary or remainder interest was understated in the bond, a new bond or a supplemental bond may be required, or such tax to the extent of the understatement may be collected.

If the decedent's gross estate consists of both a reversionary or remainder interest in property and other property, the tax attributable to the reversionary or remainder interest, within the meaning of section 925 and this section, is an amount which bears the same ratio to the total tax which the value of the reversionary or remainder interests bears to the entire gross estate, subject to the following qualification: In determining the ratio, the value of the reversionary or remainder interest should be reduced by (1) the amount of claims, mortgages, and indebtedness which is a lien upon such interest; (2) losses in respect of such interest during the settlement of the estate which are deductible under the provisions of sections 812(b)(5) and 861(a)(1); (3) any amount in respect of such interest identified as previously taxed property under the provisions of sections 812(c) and 861(a)(2); (4) any amount deductible on account of devises or bequests of such interests to charitable, etc., uses as described in sections 812(d) and 861(a)(3). In determining the ratio, the gross estate should likewise be reduced by such deductions having similar relationship to items in the gross estate other than the remainder or reversionary interest.

If the time for payment of the Federal estate tax attributable to a reversionary or remainder interest in property is postponed, all estate, inheritance, legacy, or succession taxes allowable as a credit under the provisions of section 813(b), as amended, which are paid and for which credit is claimed within the period provided in such section, will be allowed not to exceed 80 per cent, respectively, of that portion of the Federal basic tax attributable to such interest and to that portion attributable to the other property, and will be applied first to the respective portion of the Federal basic tax which is attributable to the same interests in property to which the estate, inheritance, legacy, or succession taxes are attributable. Estate, inheritance, legacy, or succession taxes, as described in section 813(b), as amended, which are attributable to the reversionary or remainder interest and which are paid and for which credit is claimed after the expiration of the period provided in that section will also be allowed as a credit against the Federal basic tax attributable to such interest (limited by the requirement that the total credit may not exceed 80 per cent of the total Federal basic tax) if such taxes are paid and credit therefor is claimed prior to the expiration of 60 days after the termination of the preceding interest or interests in the property.

Example. The Federal basic tax attributable to the reversionary or remainder interest is \$5,000, and that attributable to all other property is \$10,000. The estate, inheritance, legacy, or succession taxes paid to the State within the 4-year period are \$9,000, all attributable to property other than the reversionary or remainder interest. Of this \$9,000, the maximum of \$8,000 is credited against the

Federal basic tax of \$10,000 attributable to property other than the reversionary or remainder interest, and the balance of \$1,000 is credited to the Federal basic tax attributable to the reversionary interest. Accordingly, the estate will be required to pay \$2,000 (Federal basic tax of \$10,000 attributable to property other than the reversionary or remainder interest, minus the credit of \$8,000) at once, and an extension will be allowed for payment of \$4,000 (Federal basic tax of \$5,000 attributable to the reversionary interest, minus credit of \$1,000). After expiration of the 4-year period, but before expiration of 60 days after termination of the life estate or precedent interest, the estate pays additional State estate, inheritance, legacy, or succession taxes of \$5,000 attributable to the reversionary or remainder interest. As the maximum credit is \$12,000 (80 per cent of \$15,000, the total Federal basic tax) and \$9,000 has already been allowed, there will be an additional allowance of \$3,000, and the estate will be required to pay \$1,000 at the end of the extension period.

If any estate, inheritance, legacy, or succession taxes are imposed by any of the several States, Territories, or possessions of the United States, or the District of Columbia upon a reversionary or a remainder interest in property and other property, without definitely apportioning the tax between such classes of property, for the purposes of this section the amount of such estate, inheritance, legacy, or succession taxes which will be deemed to be attributable to the reversionary or remainder interest will be an amount which bears the same ratio to the total of such taxes as the value of such property bears to the value of the decedent's entire estate upon which the estate, inheritance, legacy, or succession tax was imposed. In determining the ratio, reduction will be made in the value of the reversionary or remainder interest and the value of the gross estate as previously provided in this section for determining the Federal estate tax attributable to the reversionary or remainder interest.

The amount of tax the payment of which is postponed under the provisions of section 925 bears interest at the rate of 4 per cent per annum from the expiration of 18 months after the date of the decedent's death until such amount is paid. (See section 81.81(b).)*

SEC. 81.80 Extension of time for payment of deficiency tax.—If it is shown to the satisfaction of the Commissioner that the payment of the deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner may grant an extension of time for the payment of the deficiency or any part thereof for a period not to exceed in all four years from the date prescribed for the payment of the deficiency.

The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the estate. It must appear that substantial financial loss,

for example, due to the sale of property at a sacrifice price, will result to the estate from making payment of the deficiency at the due date. If a market exists, the sale of property at the current market price is not ordinarily considered as resulting in an undue hardship. No extension will be granted where the deficiency is due to negligence or intentional disregard of the rules and regulations, or to fraud with intent to evade the tax.

An application for such an extension must be in writing and must contain, or be supported by, information under oath showing the undue hardship that would result to the estate were the requested extension refused. The application, with the supporting information, must be filed with the collector, who will transmit it to the Commissioner with his recommendations as to the extension. When it is received by the Commissioner, it will be examined, and, if possible, within 30 days will be denied, granted, or tentatively granted subject to certain conditions of which the executor will be notified. The Commissioner will not consider an application for an extension of time for the payment of a deficiency unless request therefor is made to the collector on or before the date prescribed for payment thereof, as shown by the notice and demand from the collector. If the executor desires to obtain an additional extension, the request therefor must be made to the collector on or before the date of the expiration of the previous extension. No single extension for more than one year will be granted. The granting of an extension of time for paying the deficiency is discretionary, and such authority will be exercised under such conditions as may be deemed advisable.

As a condition to the granting of such an extension, the Commissioner will usually require the executor to furnish a bond in an amount not exceeding double the amount of the deficiency, or to furnish other security satisfactory to the Commissioner for the payment of the liability on or before the date prescribed for payment in the extension, so that the risk of loss to the Government will not be more at the end of the extension period than it was at the beginning of the period. If a bond is required it shall be conditioned upon the payment of the deficiency, interest, and any additional amounts assessed in connection therewith in accordance with the terms of the extension granted, and shall be executed by a surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds, and shall be subject to the approval of the Commissioner. In lieu of such a bond, the executor may file a bond secured by the deposit of bonds or notes of the United States, any public debt obligations of the United States, or any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, equal in their total par value to the amount of such bond. (See section 1126 of the Revenue

Act of 1926, as amended by section 7 of the Act of February 4, 1935, 49 Stat. 22, U. S. C., 1940 edition, Title 6, section 15.)

The amount of the deficiency for which an extension is granted, with any additions thereto, shall be paid on or before the expiration of the period of the extension without the necessity of notice and demand from the collector. Payment of the amount for which the extension was granted and any additions thereto before the expiration of the extension will not relieve the executor from paying the entire amount of interest provided for in the extension.

The granting of such an extension will not operate to prevent the running of interest. (See section 81.82.) An extension of time to pay the deficiency may extend the period within which taxes allowed as a credit by section 813(b) are required to be paid and the credit therefor claimed. (See section 81.9.) The running of the statute of limitations for assessment and collection, as provided in section 874, is suspended for the period of the extension. (See sections 81.74 and 81.102.)*

INTEREST ON TAX

SEC. 890. [Part IV, Subchapter A.] INTEREST ON EXTENDED PAYMENTS.

(a) TAX SHOWN ON RETURN.—If the time for the payment is extended as provided in section 822(a)(2) there shall be collected, as a part of such amount, interest thereon from the expiration of three months after the due date of the tax to the expiration of the period of the extension. In the case of any such extension, the rate of interest shall be 4 per centum per annum.

(b) DEFICIENCY.—In case an extension for the payment of a deficiency is granted, as provided in section 871(h), there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period.

SEC. 925. [Part IV, Subchapter A.] PERIOD OF EXTENSION.

Where there is included in the value of the gross estate the value of a reversionary or remainder interest in property, the payment of the part of the tax imposed by this subchapter attributable to such interest may, at the election of the executor, be postponed until six months after the termination of the precedent interest or interests in the property, and the amount the payment of which is so postponed shall then be payable, together with interest thereon at the rate of 4 per centum per annum from eighteen months after the date of the decedent's death until such amount is paid.

SEC. 891. [Part IV, Subchapter A.] INTEREST ON DEFICIENCIES.

Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the due date of the tax to the date the deficiency is assessed, or, in the case of a waiver

under section 871(d), to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier.

SEC. 871. [Part IV, Subchapter A.] PROCEDURE IN GENERAL.

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(i) **50 PER CENT ADDITION TREATED AS DEFICIENCY.**—The 50 per centum addition to the tax provided by section 3612(d) (2) shall, when assessed in connection with an estate tax, be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of section 891 shall not be applicable.

SEC. 892. [Part IV, Subchapter A.] INTEREST ON JEOPARDY ASSESSMENTS.

In the case of the amount collected under section 872(i) there shall be collected at the same time as such amount, and as a part of the tax, interest at the rate of 6 per centum per annum upon such amount from the date of the jeopardy notice and demand to the date of notice and demand under section 872(i), or, in the case of the amount collected in excess of the amount of the jeopardy assessment, interest as provided in section 891.

SEC. 893. [Part IV, Subchapter A.] ADDITIONS TO THE TAX IN CASE OF NONPAYMENT.

(a) TAX SHOWN ON RETURN.—

(1) **PAYMENT NOT EXTENDED.**—Where the amount determined by the executor as the tax imposed by this subchapter, or any part of such amount, is not paid on the due date of the tax, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 6 per centum per annum from the due date until it is paid.

(2) **PAYMENT EXTENDED.**—Where an extension of time for payment of the amount so determined as the tax by the executor has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under section 890(a), is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subsection, interest at the rate of 6 per centum per annum shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) DEFICIENCY.—

(1) **PAYMENT NOT EXTENDED.**—Where a deficiency, or any interest assessed in connection therewith under section 891, or any addition to the tax provided for in section 3612(d), is not paid in full within 30 days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid.

(2) **FILING OF JEOPARDY BOND.**—If a bond is filed, as provided in section 872, the provisions of paragraph (1) of this subsection shall not apply to the amount covered by the bond.

(3) **PAYMENT EXTENDED.**—If the part of the deficiency the time for payment of which is extended as provided in section 871(h) is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 6 per centum per annum for the period from

the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period.

(4) JEOPARDY ASSESSMENT—PAYMENT STAYED BY BOND.—If the amount included in the notice and demand from the collector under section 872(i) is not paid in full within 30 days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid.

SEC. 872. [Part IV, Subchapter A.] JEOPARDY ASSESSMENTS.

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(f) BOND TO STAY COLLECTION.—When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in section 892 or 893(b)(4). If any portion of the jeopardy assessment is abated by the Commissioner before the decision of the Board is rendered, the bond shall at the request of the taxpayer, be proportionately reduced.

(g) SAME—FURTHER CONDITIONS.—If the bond is given before the executor has filed his petition with the Board under subsection (a) of section 871, the bond shall contain a further condition that if a petition is not filed within the period provided in such subsection, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subsection.

* * * * *

(i) COLLECTION OF UNPAID AMOUNTS.—When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the

tax imposed by subchapter A, except that in the case of a citizen or resident of the United States a return shall be required if the value of the gross estate at the time of decedent's death exceeds the amount of the specific exemption provided in section 935(c).

SEC. 81.81 (a) Interest on tax shown on return.—If any portion of the tax shown on the executor's return is not paid on or before the due date, and no extension of time for payment thereof has been granted, such unpaid portion bears interest from the due date until payment is received by the collector at the rate of 6 per cent per annum.

If an extension of time has been granted for paying any portion of the tax shown on the executor's return, in accordance with section 81.79(a), interest accrues thereon at the rate of 4 per cent per annum from the expiration of 18 months after the decedent's death to the expiration of the period of the extension. If the amount of the tax, the time for payment of which has been extended, together with any interest accrued thereon, is not paid in full on or before the date of the expiration of the extension, the total unpaid amount (tax and any accrued interest) bears interest from the expiration of the extension until payment is received by the collector at the rate of 6 per cent per annum.

Interest at 4 or 6 per cent per annum is computed on the basis of 365 days to the year, or 366 days in a leap year.

(b) Interest on tax attributable to a reversionary or remainder interest.—If the time for the payment of the tax attributable to a reversionary or remainder interest is postponed in accordance with the provisions of section 925, the amount the payment of which is so postponed will bear interest at the rate of 4 per cent per annum from the expiration of 18 months after the date of the decedent's death until such amount is paid. However, if the amount of the tax, the time for payment of which is so postponed, together with interest accrued thereon, is not paid in full on or before the date of the expiration of the period of the postponement (six months after the termination of the precedent interest or interests in the property), the unpaid amount bears interest at the rate of 6 per cent per annum from the date of the expiration of the period of the postponement until payment is received by the collector.*

SEC. 81.82 Interest on deficiency tax.—The Internal Revenue Code provides that any deficiency shall bear interest at the rate of 6 per cent per annum from the due date for payment of the tax (15 months after the date of death) to the date the deficiency is assessed, except in the case of a waiver of the restrictions against the assessment and collection of the deficiency, and that such interest shall be assessed at the same time as the deficiency of which it becomes an integral

part. The deficiency in respect of which the restrictions against the assessment and collection are waived under section 871(d) bears interest at the rate of 6 per cent per annum from the due date of the tax to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed, whichever is the earlier. The term "deficiency" includes any tax resulting from the correction of a mathematical error appearing upon the face of a return. (See second paragraph of section 81.74.)

If any portion of the deficiency assessed is not paid within 30 days from the date of the notice and demand issued by the collector (except a deficiency or any part thereof with respect to which a jeopardy assessment is made and collection is stayed by the filing of a bond), and no extension of time for payment thereof has been granted, such unpaid portion bears interest from the date of the notice and demand until payment is received by the collector at the rate of 6 per cent per annum.

If an extension of time is granted for paying any portion of the deficiency assessed, in accordance with section 81.80, interest accrues thereon at the rate of 6 per cent per annum for the period of the extension, i. e., from the date prescribed for the payment (30 days after the date of the notice and demand) to the expiration of the period of the extension. If the amount of the deficiency, the time for payment of which has been extended, together with interest accrued thereon, is not paid in full on or before the date of the expiration of the extension, the total unpaid amount (tax, interest and any addition thereto) bears interest from the expiration of the extension until payment is received by the collector at the rate of 6 per cent per annum.

Any addition to the tax resulting from the imposition of an ad valorem penalty under the provisions of section 3612(d) is not subject to any interest between the due date for payment of the tax (15 months after the date of death) and the date of the assessment of the penalty.

If a stay of the collection of a jeopardy assessment of a deficiency tax, or any addition to the tax resulting from the imposition of an ad valorem penalty, is obtained and a petition for a redetermination of the deficiency is filed with the Board of Tax Appeals, interest accrues on such unpaid portion of the deficiency or penalty, if any, determined by a decision of the Board which is made final, at the rate of 6 per cent per annum from the date of the notice and demand from the collector following the jeopardy assessment to the date of the notice and demand by the collector subsequent to the final action taken on the petition filed with the Board. If the amount which the Board determines should have been assessed is not paid in full within 30 days from the date of such notice and demand

issued subsequent to the decision of the Board which has become final, interest accrues upon the unpaid amount from the date of such notice and demand until it is paid at the rate of 6 per cent per annum. If the amount (exclusive of any ad valorem penalty) determined by the Board as the amount which should be assessed is greater than the amount actually assessed the difference bears interest at the rate of 6 per cent per annum from the due date of the tax until assessment of such difference. If the collection of the jeopardy assessment is stayed, and no petition is filed with the Board for a redetermination of the deficiency, interest accrues upon the deficiency so assessed at the rate of 6 per cent per annum from the date of the jeopardy notice and demand to the date of the notice and demand made by the collector after the expiration of the 90 days from the mailing by the Commissioner of the notice of the deficiency. If such amount is not paid within 30 days from the date of such further notice and demand, interest accrues upon the unpaid amount from the date of such further notice and demand until it is paid at the rate of 6 per cent per annum.

Interest at 6 per cent per annum is computed on the basis of 365 days to the year, or 366 days in a leap year.*

COLLECTION OF TAX

SEC. 826. [Part II, Subchapter A.] COLLECTION OF UNPAID TAX.

(a) **SALE OF PROPERTY.**—If the tax herein imposed is not paid on or before the due date thereof the collector shall, upon instruction from the Commissioner, proceed to collect the tax under the provisions of general law; or appropriate proceedings may be commenced in any court of the United States having jurisdiction, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. This subsection in so far as it applies to the collection of a deficiency shall be subject to the provisions of sections 871 and 891.

(b) **REIMBURSEMENT OUT OF ESTATE.**—If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this subchapter that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution.

(c) **LIABILITY OF LIFE INSURANCE BENEFICIARIES.**—If any part of the gross estate consists of proceeds of policies of insurance upon the life

of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds, in excess of \$40,000, of such policies bear to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio.

SEC. 81.83 Sale of property.—The remedy by action provided in section 826(a) is not exclusive. For other available remedies for the collection of the tax, see section 81.102.*

SEC. 81.84 Right to reimbursement.—If any portion of the tax is paid by or collected out of that part of the estate passing to, or in the possession of, any person other than the duly qualified executor or administrator, such person may be entitled to reimbursement, either out of the undistributed estate or by contribution from other beneficiaries whose shares or interests in the estate would have been reduced had the tax been paid before distribution of the estate, or whose shares or interests are subject either to an equal or prior liability for the payment of taxes, debts, or other charges against the estate. The executor is entitled to require beneficiaries under insurance policies to bear their proportion of the tax. These provisions, however, are not designed to curtail the right of the Commissioner to collect the tax from any person, or out of any property, liable therefor. The Commissioner cannot be required to apportion the tax among the persons liable, nor to enforce any right to reimbursement or contribution.*

LIEN FOR TAX

SEC. 827. [Part II, Subchapter A.] LIEN FOR TAX.

•(a) **UPON GROSS ESTATE.**—Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

(b) **UPON PROPERTY OF TRANSFEREE.**—If (1) except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death, or makes a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession or enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any

person, to designate the persons who shall possess or enjoy the property or the income therefrom, or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

(c) **CONTINUANCE AFTER DISCHARGE OF EXECUTOR.**—The provisions of section 825 shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless the title to such part of the gross estate has passed to a bona fide purchaser for value, in which case such part shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

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SEC. 825. [Part II, Subchapter A.] DISCHARGE OF EXECUTOR FROM PERSONAL LIABILITY.

(a) **APPLICATION FOR DISCHARGE.**—If the executor makes written application to the Commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Commissioner (as soon as possible, and in any event within one year after the making of such application, or, if the application is made before the return is filed, then within one year after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in sections 874 and 875) shall notify the executor of the amount of the tax. The executor, upon payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

SEC. 81.85 Property subject to lien.—The lien imposed by section 827 attaches at the date of the decedent's death to every part of the gross estate, whether or not the property comes into the possession of the duly qualified executor or administrator. It attaches to the extent of the tax shown to be due by the return and of any deficiency tax found to be due upon review and audit.

The lien upon the entire property constituting the gross estate continues for a period of 10 years after the decedent's death, except—

(a) If the tax is paid in full before the expiration of such period.

(b) Such portion of the gross estate as is used for the payment of charges against the estate and expenses of its administration allowed by any court having jurisdiction thereof.

(c) Such portion of the gross estate as has passed to a bona fide purchaser for value if payment is made of the full amount of tax determined by the Commissioner pursuant to a request of the executor for discharge from personal liability, as authorized by sections 825(a) and 827(c) (see section 81.71), but there is substituted a like lien upon the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

(d) Such property as was received from the decedent as a transfer by trust or otherwise in contemplation of or intended to take effect in possession or enjoyment at or after his death, or under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom (except in case the transfer was a bona fide sale for an adequate and full consideration in money or money's worth), and was sold by the transferee or trustee to a bona fide purchaser for such a consideration. In such case the lien attaches to all the property of the transferee or trustee except such thereof as may be sold to a bona fide purchaser for such a consideration.

(e) If a certificate releasing such lien is issued. (See section 81.86.)*

SEC. 81.86 Release of lien.—The statute provides that if the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may issue his certificate releasing any or all property of the estate from the lien. The issuance of certificates releasing such lien is a matter resting within the discretion of the Commissioner, and certificates will be issued only in case there is actual need therefor. The primary purpose of such release is not to evidence payment or satisfaction of the tax, but to permit the transfer of property free from the lien in case it is necessary to clear title. Receipts for payment of the tax are issued by the collector.

If the tax liability has been fully discharged a certificate may be issued releasing the lien as to any or all property of the estate. If the tax liability has not been fully discharged, no general release of all property of the estate will be granted but certificates releasing the lien upon particular items of property may be issued by the Commissioner, who may require as a prerequisite, in such an amount as he may designate, a partial payment of tax or the furnishing of an indemnity bond with such surety or sureties as he deems necessary. In lieu of such surety or sureties, the bond may be secured by the deposit of bonds or notes of the United States, any

public debt obligations of the United States, or any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, equal in their total par value to the amount of such bond. (See section 1126 of the Revenue Act of 1926, as amended by section 7 of the Act of February 4, 1935, 49 Stat. 22, U. S. C., 1940 edition, Title 6, section 15.) The tax will be considered fully discharged only when investigation has been completed and payment of the tax, including any deficiency finally determined, has been made.

The application for a release should be filed with the Commissioner and should explain the circumstances that require the release, fully describe the particular items for which the release is desired, and show the applicant's relationship to the estate, such as executor, heir, devisee, legatee, beneficiary, transferee, or purchaser. If the return, Form 706, has not been filed, an affidavit may be required showing the value of the property to be released, the basis for such valuation, the approximate value of the gross estate, the approximate value of the total real property included in the gross estate, and in case the property is to be sold or transferred, the name and address of the purchaser or transferee and the consideration to be received.*

PENALTIES

SEC. 894. [Part IV, Subchapter A.] PENALTIES.

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(b) SPECIFIC.—

(1) CIVIL.—Whoever fails to comply with any duty imposed upon him by section 820, 821, or 864, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Commissioner or any collector or law officer of the United States or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this subchapter, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

(2) CRIMINAL.—

(A) Whoever knowingly makes any false statement in any notice or return required to be filed under this subchapter shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both.

(B) Any person required under this subchapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this subchapter, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law

or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(C) Any person required under this subchapter to collect, account for and pay over any tax imposed by this subchapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this subchapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(D) The term "person" as used in paragraphs (B) and (C) includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

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SEC. 3793. [Chapter 38.] PENALTIES AND FORFEITURES.

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(b) FRAUDULENT RETURNS, AFFIDAVITS, AND CLAIMS.—

(1) ASSISTANCE IN PREPARATION OR PRESENTATION.—Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony, and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(2) PERSON DEFINED.—The term "person" as used in this subsection includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

SEC. 3710. [Chapter 36.] SURRENDER OF PROPERTY SUBJECT TO DISTRAINT.

(a) REQUIREMENT.—Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) PENALTY FOR VIOLATION.—Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

(c) **PERSON DEFINED.**—The term “person” as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

SEC. 3612. [Chapter 34.] RETURNS EXECUTED BY COMMISSIONER OR COLLECTOR.

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(d) **ADDITIONS TO TAX.**—

(1) **FAILURE TO FILE RETURN.**—In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax: *Provided*, That in the case of a failure to make and file a return required by law, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, if the last date so prescribed for filing the return is after August 30, 1935, then there shall be added to the tax, in lieu of such 25 per centum: 5 per centum if the failure is for not more than 30 days, with an additional 5 per centum for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per centum in the aggregate.

(2) **FRAUD.**—In case a false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 per centum of its amount.

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(e) **COLLECTION OF ADDITIONS TO TAX.**—The amount added to any tax under paragraphs (1) and (2) of subsection (d) shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

(f) **DETERMINATION AND ASSESSMENT.**—The Commissioner shall determine and assess all taxes, other than stamp taxes, as to which returns or lists are so made under the provisions of this section.

SEC. 3762. [Chapter 36.] PENALTIES.

Any person who, in connection with any compromise under section 3761, or offer of such compromise, or in connection with any closing agreement under section 3760, or offer to enter into any such agreement, willfully—

(a) **CONCEALMENT OF PROPERTY.**—Conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or

(b) **WITHHOLDING, FALSIFYING, AND DESTROYING RECORDS.**—Receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax—

Shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

SEC. 937. [Subchapter. B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, except that in the case of a citizen or resident of the United States a return shall be required if the value of the gross estate at the time of decedent's death exceeds the amount of the specific exemption provided in section 935(c).

SEC. 81.87 Nature of penalties.—Two kinds of penalties are provided for delinquency with respect to the duties imposed by the statute:

- (1) A specific penalty, to be recovered by suit, unless previously paid or adjusted by the acceptance of an offer in compromise; and
- (2) A penalty of a certain percentage of the tax, to be added to and collected in the same manner as the tax.

In any case in which more than one penalty is provided the Government may assert any one or more thereof.*

SEC. 81.88 Penalties for false or fraudulent notice or return.—In case any statement in the notice or return is knowingly false, the person making it is subject to a penalty not exceeding \$5,000, or imprisonment for a period not exceeding one year, or both, and for a false or fraudulent return, 50 per cent will be added to the amount of the tax. Any person required to file any notice or make a return who willfully fails to do so at the time required shall be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

Any person who willfully aids or assists in the preparation or presentation of a false or fraudulent notice or return, or procures, counsels, or advises the preparation or presentation of such a notice or return, whether such falsity or fraud is with or without the knowledge or consent of the person required to make the notice or return, will be guilty of a felony and, upon conviction thereof, fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.*

SEC. 81.89 Penalty for failure to give notice or make and file return.—For failure to give the notice required by section 820 or make and file the return required by section 821, 864, or 937 within the time prescribed in section 81.63 or 81.67, the person in default is subject to a penalty not exceeding \$500.

For failure to make and file such return within the time prescribed, or within an extension of time granted by the Commissioner or the collector, 5 per cent will be added to the tax if the failure is for not more than 30 days, with an additional 5 per cent for each 30

days or fraction thereof during which failure continues, not to exceed 25 per cent in the aggregate, except that if the return is filed after the time allowed and it is shown that the failure to file within the time so allowed was due to a reasonable cause and not to willful neglect, no such addition will be made to the tax.*

SEC. 81.90 Penalty for failure to pay tax, exhibit property, keep or exhibit records, etc., and for concealment of assets.—Any person in possession or control of any record, file, or paper, containing or supposed to contain information relating to the estate, or having in his possession or control property comprised in the gross estate of the decedent, who fails to exhibit the same upon the request of the Commissioner or any collector or law officer of the United States, or his duly authorized deputy or agent, in the performance of his duties, or having knowledge or information of any fact or facts of a material bearing upon the liability, or the extent of liability, of the estate to the tax, who fails to make disclosure thereof upon request of the Commissioner or any revenue agent or inspector designated by him for that purpose, is liable to a penalty not to exceed \$500, to be recovered by civil action. Such a request must be granted whether or not he believes that a compliance therewith is material.

Any person required to pay the tax, keep any records, or supply any information, for the purpose of the computation, assessment, or collection of the tax, who willfully fails to pay such tax, keep such records, or supply such information, as required by the law or regulations, shall, in addition to other penalties, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

Any person who willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

Any person who in connection with any compromise entered into or offer made under the provisions of section 3761, or, who in connection with any closing agreement under section 3760, or the offer to enter into any such agreement, willfully conceals from any officer or employee of the United States any property belonging to the estate or any person liable in respect of the tax, or receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement, relating to the estate or its value or the financial condition of any person liable in respect of the tax, shall, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both.*

SEC. 81.91 Penalty for assisting, procuring, or advising the preparation or presentation of false or fraudulent documents.—Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent affidavit, claim, or document, shall, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such affidavit, claim, or document, be guilty of a felony, and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.*

ABATEMENT AND STAY OF COLLECTION OF JEOPARDY ASSESSMENT

SEC. 872. [Part IV, Subchapter A.] JEOPARDY ASSESSMENTS.

* * * * *

(f) **BOND TO STAY COLLECTION.**—When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in section 892 or 893(b)(4). If any portion of the jeopardy assessment is abated by the Commissioner before the decision of the Board is rendered, the bond shall, at the request of the taxpayer, be proportionately reduced.

(g) **SAME—FURTHER CONDITIONS.**—If the bond is given before the executor has filed his petition with the Board under subsection (a) of section 871, the bond shall contain a further condition that if a petition is not filed within the period provided in such subsection, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subsection.

(h) **WAIVER OF STAY.**—Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The executor shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the executor, be proportionately reduced. If the Board determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Board is rendered the bond shall, at the request of the executor, be proportionately reduced.

(i) **COLLECTION OF UNPAID AMOUNTS.**—When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then

any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

SEC. 873. [Part IV, Subchapter A.] CLAIMS IN ABATEMENT.

No claim in abatement shall be filed in respect of the assessment of any estate tax imposed by this subchapter.

SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, except that in the case of a citizen or resident of the United States a return shall be required if the value of the gross estate at the time of decedent's death exceeds the amount of the specific exemption provided in section 935(c).

SEC. 81.92 Claim for abatement.—No claim for abatement may be filed in respect of any assessment of estate tax imposed by the Internal Revenue Code. The amount of any assessment directed to be abated by the statute as the result of a decision of the Board of Tax Appeals which has become final and all overassessments determined as a result of audit or examination of returns will be abated by the Commissioner without action on the part of the executor.*

SEC. 81.93 Collection of jeopardy assessment stayed by filing bond.—If a jeopardy assessment has been made, the executor, within 30 days after notice and demand from the collector for payment of the amount of the jeopardy assessment may obtain a stay of collection of the whole, or any part, of the amount of such assessment by filing with the collector a bond in such amount not exceeding double the amount as to which the stay is desired, and with such sureties as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated as a result of a decision of the Board which has become final, together with the interest thereon, as provided in the statute. (See section 81.82.) In lieu of such sureties, the bond may be secured by the deposit of bonds or notes of the United States, any public debt obligations of the United States, or any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, equal in their total par value to the amount of such bond. (See section 1126 of the Revenue Act of 1926, as amended by section 7 of the Act of February 4, 1935, 49 Stat. 22, U. S. C., 1940 edition, Title 6, section 15.) The petition with the

Board of Tax Appeals for redetermination of the deficiency in respect of which the jeopardy assessment was made must be filed within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) after the mailing by the Commissioner of the notice of deficiency. (See section 81.73.) If any portion of the jeopardy assessment is abated by the Commissioner before the decision of the Board is rendered, the bond will, upon request of the executor, be proportionately reduced. If the bond is given before the petition is filed with the Board, the bond shall contain a further condition that if a petition is not filed within the 90 days, then the amount, the collection of which is stayed by the bond, shall be paid on notice and demand at any time after the expiration of such 90-day period, together with interest thereon at the rate of 6 per cent per annum from the date of the jeopardy notice and demand made by the collector to the date of notice and demand made after the expiration of the 90-day period.*

SEC. 81.94 Accrual of interest as affected by the stay of the collection of a jeopardy assessment.—For rules relating to the accrual of interest where the collection of a jeopardy assessment is stayed by the filing of a bond, see section 81.82.*

SEC. 81.95 Limitation of time to file bond to stay collection of jeopardy assessment.—If it is desired to stay the collection of the whole, or any part, of the amount in respect of which a jeopardy assessment has been made, the bond referred to in section 81.93 must be filed with the collector within 30 days after notice and demand by the collector for the payment of the amount of the jeopardy assessment.*

REFUNDS

SEC. 910. [Part IV, Subchapter A.] PERIOD OF LIMITATION FOR FILING CLAIMS.

All claims for the refunding of the tax imposed by this subchapter alleged to have been erroneously or illegally assessed or collected must be presented to the Commissioner within three years next after the payment of such tax. The amount of the refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the three years immediately preceding the allowance of the refund.

SEC. 911. [Part IV, Subchapter A.] EFFECT OF PETITION TO BOARD.

If the Commissioner has mailed to the executor a notice of deficiency under section 871(a) and if the executor files a petition with the Board of Tax Appeals within the time prescribed in such subsection, no refund in respect of the tax shall be allowed or made and no suit for the recovery of any part of such tax shall be instituted in any court, except—

(a) As to overpayments determined by a decision of the Board which has become final; and

(b) As to any amount collected in excess of an amount computed in accordance with the decision of the Board which has become final; and

(c) As to any amount collected after the statutory period of limitations upon the beginning of distraint or a proceeding in court for collection has expired; but in any such claim for refund or in any such suit for refund the decision of the Board which has become final, as to whether such period had expired before the notice of deficiency was mailed, shall be conclusive.

SEC. 912. [Part IV, Subchapter A.] OVERPAYMENT FOUND BY BOARD.

If the Board finds that there is no deficiency and further finds that the executor has made an overpayment of tax, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Board has become final, be credited or refunded to the executor as provided in section 3770(a). No such refund shall be made of any portion of the tax unless the Board determines as part of its decision that such portion was paid within three years before the filing of the claim or the filing of the petition, whichever is earlier, or that such portion was paid after the mailing of the notice of deficiency.

SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, * * *.

SEC. 3746. [Chapter 36.] SUITS FOR RECOVERY OF ERRONEOUS REFUNDS.

(a) **REFUNDS AFTER LIMITATION PERIOD.**—Any portion of an internal revenue tax (or any interest, penalty, additional amount, or addition to such tax) refund of which is erroneously made, within the meaning of section 3774, may be recovered by suit brought in the name of the United States, but only if such suit is begun within two years after the making of such refund.

(b) **REFUNDS OTHERWISE ERRONEOUS.**—Any portion of an internal revenue tax (or any interest, penalty, additional amount, or addition to such tax) which has been erroneously refunded (if such refund would not be considered as erroneous under section 3774) may be recovered by suit brought in the name of the United States, but only if such suit is begun before the expiration of two years after the making of such refund.

(c) **REFUNDS BASED ON FRAUD OR MISEPRESENTATION.**—Despite the provisions of subsections (a) and (b) such suit may be brought at any time within five years from the making of the refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact.

(d) **INTEREST.**—Erroneous refunds recoverable by suit under this section shall bear interest at the rate of 6 per centum per annum from the date of the payment of the refund.

SEC. 3760. [Chapter 36.] CLOSING AGREEMENTS.

(a) **AUTHORIZATION.**—The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, author-

ized in writing by the Commissioner) is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any taxable period.

(b) **FINALITY.**—If such agreement is approved by the Secretary, the Under Secretary, or an Assistant Secretary, within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) The case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

SEC. 3770. [Chapter 37.] AUTHORITY TO MAKE ABATEMENTS, CREDITS, AND REFUNDS.

(a) **TO TAXPAYERS.**—

(1) **ASSESSMENTS AND COLLECTIONS GENERALLY** (as amended by section 508(b) of the Second Revenue Act of 1940).—Except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes, the Commissioner, subject to regulations prescribed by the Secretary, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected.

(2) **ASSESSMENTS AND COLLECTIONS AFTER LIMITATION PERIOD.**—Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim.

(3) **DATE OF ALLOWANCE.**—Where the Commissioner has signed a schedule of overassessments in respect of any internal revenue tax imposed by this title, the Revenue Act of 1932, or any prior revenue Act, the date on which he first signed such schedule (if after May 28, 1928) shall be considered as the date of allowance of refund or credit in respect of such tax.

* * * * *

(b) **TO COLLECTORS AND OFFICERS.**—The Commissioner, subject to regulations prescribed by the Secretary, is authorized to repay—

(1) **COLLECTIONS RECOVERED.**—To any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expense of suit; also

(2) **DAMAGES AND COSTS.**—All damages and costs recovered against any collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty.

SEC. 3772. [Chapter 37.] SUITS FOR REFUND.

(a) LIMITATIONS.—

(1) CLAIM.—No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

(2) TIME.—No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which such suit or proceeding relates.

(3) RECONSIDERATION AFTER MAILING OF NOTICE.—Any consideration, reconsideration, or action by the Commissioner with respect to such claim following the mailing of a notice by registered mail of disallowance shall not operate to extend the period within which suit may be begun. This paragraph shall not operate (A) to bar a suit or proceeding in respect of a claim reopened prior to June 22, 1936, if such suit or proceeding was not barred under the law in effect prior to that date, or (B) to prevent the suspension of the statute of limitations for filing suit under section 3774(b)(2).

(b) PROTEST OR DURESS.—Such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

* * * * *

SEC. 177. Judicial Code (as amended by section 808 of the Revenue Act of 1936, 49 Stat. 1746 [U. S. C., 1940 edition, Title 28, section 284(b)]).

* * * * *

(b) In any judgment of any court rendered (whether against the United States, a collector or deputy collector of internal revenue, a former collector or deputy collector, or the personal representative in case of death) for any overpayment in respect of any internal-revenue tax, interest shall be allowed at the rate of 6 per centum per annum upon the amount of the overpayment, from the date of the payment or collection thereof to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue. The Commissioner is hereby authorized to tender by check payment of any such judgment, with interest as herein provided, at any time after such judgment becomes final, whether or not a claim for such payment has been duly filed, and such tender shall stop the running of interest, whether or not such refund check is accepted by the judgment creditor.

SEC. 3774. [Chapter 37.] REFUNDS AFTER PERIODS OF LIMITATION.

A refund of any portion of an internal revenue tax (or any interest, penalty, additional amount, or addition to such tax) shall be considered erroneous—

(a) **EXPIRATION OF PERIOD FOR FILING CLAIM.**—If made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed; or

(b) **DISALLOWANCE OF CLAIM AND EXPIRATION OF PERIOD FOR FILING SUIT.**—In the case of a claim filed within the proper time and disallowed by the Commissioner if the refund was made after the expiration of the period of limitation for filing suit, unless—

(1) within such period suit was begun by the taxpayer, or

(2) within such period, the taxpayer and the Commissioner agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of final decision in one or more named cases then pending before the Board of Tax Appeals or the courts. If such agreement has been entered into, the running of such statute of limitations shall be suspended in accordance with the terms of the agreement.

* * * * *

SEC. 81.96 Claim for refund.—A claim for refund of estate tax, or for refund of interest or penalties, erroneously or illegally collected, should be made on the form prescribed by the Treasury Department (Form 843), and should be filed with the collector of internal revenue, although a claim will not be considered defective solely by reason of the fact that it is not made on the form or that it is filed with the Commissioner of Internal Revenue. The claim must set forth in detail and under oath each ground upon which a refund is claimed, and facts sufficient to apprise the Commissioner of the exact basis thereof. Any claim which does not comply with the requirements of the preceding sentence will not be considered for any purpose as a claim for refund.

Claims for the refund of estate tax imposed by the Internal Revenue Code must be filed within three years next after the payment of the amount sought to be refunded.

The amount of the refund shall not exceed the portion of the tax paid during the three year period immediately preceding the filing of the claim, or the filing of the petition with the Board of Tax Appeals. Upon receipt of any claim for refund, other than a claim for refund of an overpayment determined in accordance with a decision of the Board of Tax Appeals which has become final, the return of the estate will be reaudited and only the excess payment determined by the Commissioner as a result of consideration of the claim and reaudit will be refunded. If the reaudit reveals that the tax has been underpaid, the amount of such underpayment will be collected unless the collection thereof is barred.

If a petition was filed with the Board of Tax Appeals for the redetermination of a deficiency, as provided by section 871(a), and the Board finds that the executor has made an overpayment of the tax, and further determines as part of its decision that any portion

of the overpayment was made within three years before the filing of the claim or the filing of the petition, whichever is earlier, or that such portion was paid after the mailing of the notice of deficiency, the amount of such portion of the overpayment will be refunded.

Save in the case of a claim for refund of an overpayment computed in accordance with a decision of the Board of Tax Appeals which has become final, the burden of proof rests upon the claimant and all facts relied upon in support of the claim must be clearly set forth under oath. Every affidavit, argument, brief, or statement of facts, prepared or filed by an attorney or agent as argument or evidence in the matter of a protest, must have therein a statement signed by such attorney or agent showing whether or not he prepared such document and whether or not the attorney or agent knows of his own knowledge that the facts contained therein are true. In case there is a hearing, should the executor not appear in person, his representative who appears must present a properly executed power of attorney and be enrolled to practice before the Treasury Department. (See section 81.72.)

(a) If the claim is made by an executor or administrator, a certificate of the court must be furnished showing that the appointment remains in full force and effect.

(b) If the executor or administrator has been discharged and no administrator de bonis non has been appointed and qualified, there should be submitted, in lieu of the certificate above mentioned, (1) a certified copy of the court order granting the discharge, and (2) a certified copy of the order of distribution, or, if such order does not fully disclose the identity of the person or persons entitled to receive any amount that may be refunded and the percentage or proportion thereof to which each, if more than one, is entitled, there should be submitted a certified copy of the decedent's will, if any, and such further proof as may be requisite to establish both the identity of such person or persons and the percentage or proportion of the amount sought to be refunded to which each, in case there are more than one, is entitled.

If upon audit of the return filed by the executor the Commissioner determines that an overassessment has been made on account of the tax, a certificate of overassessment will be prepared and issued, even though claim for refund of such excess payment has not been filed. However, in such case the documentary evidence, as set out above, identifying the person or persons entitled to receive the refund will be required.

A refund is erroneous if made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed. In case a claim was filed for the refund of the

tax within the proper time and was disallowed by the Commissioner, and the period of limitation for filing suit by the executor had expired prior to the making of the refund, a refund based upon such claim is erroneous unless suit was begun by the executor within the period of limitation for filing suit, or unless within such period the executor and the Commissioner agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of final decision of one or more named cases then pending before the Board of Tax Appeals or the courts. Erroneous refunds, as above described, may be recovered by suit brought in the name of the United States within two years after the making of such refunds. An erroneous refund, though not considered as erroneous under section 3774, may be recovered in the same manner if the suit is begun within two years after the making of such refund. Erroneous refunds, whether erroneous under the provisions of section 3774 or otherwise, may be recovered by suit brought within five years of the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

A claim for the payment of a judgment rendered against a collector of internal revenue representing Federal estate tax, penalties, or other sums collected in connection therewith should be made on Form 843 and filed with the Commissioner of Internal Revenue, Washington, D. C. The claimant should state the names of all parties to the action, the date of its commencement, the date of the judgment, the court in which it was recovered, its amount, and the fact that the action related to Federal estate tax or interest or penalties in connection therewith. To the claim there should be annexed two certified copies of the final judgment, a certificate of probable cause (see section 989 of the Revised Statutes [U. S. C., 1940 edition, Title 28, section 842]) and, if refund is claimed, an itemized bill of the costs paid, receipted by the clerk or other proper officer of the court.

A claim for the payment of a judgment rendered against the United States representing Federal estate tax, penalties, or other sums collected in connection therewith should be made on Form 843 in the manner prescribed in the preceding paragraph, except that—

- (a) a certificate of probable cause is not required,
- (b) the claims shall be executed in duplicate, and

(c) in the case of a judgment rendered by the Court of Claims there may be submitted, in place of a certified copy of the final judgment, a certificate of the judgment issued by the clerk of the court and two copies of the court's opinion, if any was rendered.*

INTEREST ON REFUNDS

SEC. 813. [Part II, Subchapter A.] CREDITS AGAINST TAX.

* * * * *

(b) ESTATE, SUCCESSION, LEGACY, AND INHERITANCE TAXES.—* * * Refund based on the credit may (despite the provisions of sections 910 to 912, inclusive), be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest.

SEC. 3771. [Chapter 37.] INTEREST ON OVERPAYMENTS.

(a) RATE.—Interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the rate of 6 per centum per annum.

(b) PERIOD.—Such interest shall be allowed and paid as follows:

* * * * *

(2) REFUNDS.—In the case of a refund, from the date of the overpayment to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

* * * * *

SEC. 81.97 **Payment of claims and interest.**—Under the law, warrants in payment of claims allowed can only be drawn payable to the person or persons entitled to the proceeds, and consequently cannot be drawn payable to attorneys or agents. If the claimants are indebted to the United States for taxes, such taxes must be paid before the warrants are delivered. (U. S. C., 1940 edition, Title 31, section 227.)

Upon the allowance of the claim for refund of any tax or penalty paid, unless the refund results from the allowance of a credit for payment of estate, inheritance, legacy, or succession taxes, the statute provides for the payment of interest upon the total amount of such refund at the rate of 6 per cent per annum from the date such tax or penalty was paid to a date preceding the date of the refund check by not more than 30 days, such date to be determined by the Commissioner, whether or not such check is accepted by the taxpayer. Acceptance of a refund warrant or check will not prejudice the right of the claimant to have refunded to him any additional overpayment and interest thereon. If a refund is based upon the credit for payment of estate, inheritance, legacy, or succession taxes allowed by subsection (b) of section 813 (see section 81.9), the refund will be made without interest.*

POWER TO COMPROMISE OR REMIT PENALTIES

SEC. 3761. [Chapter 36.] COMPROMISES.

(a) AUTHORIZATION.—The Commissioner, with the approval of the Secretary, or of the Under Secretary of the Treasury, or of an Assistant Secretary of the Treasury, may compromise any civil or criminal

case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense; and the Attorney General may compromise any such case after reference to the Department of Justice for prosecution or defense.

(b) RECORD.—Whenever a compromise is made by the Commissioner in any case there shall be placed on file in the office of the Commissioner the opinion of the General Counsel for the Department of the Treasury, or of the officer acting as such, with his reasons therefor, with a statement of—

- (1) The amount of tax assessed,
- (2) The amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and
- (3) The amount actually paid in accordance with the terms of the compromise.

* * * * *

SEC. 81.98 **Compromise of taxes and penalties.**—Offers in compromise should be filed with the appropriate collector of internal revenue. No offer in compromise of tax, interest, and ad valorem penalty collectible as part of the tax will be accepted unless there is a substantial doubt as to either liability or collectibility.*

PERSONAL LIABILITY OF EXECUTOR, TRANSFEREE, TRUSTEE, AND BENEFICIARY

SEC. 3467. Revised Statutes (as amended by section 518(a) of the Revenue Act of 1934 [U. S. C., 1940 edition, Title 31, section 192]). Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

SEC. 827. [Part II, Subchapter A.] LIEN FOR TAX.

* * * * *

(b) UPON PROPERTY OF TRANSFEREE.—If (1) except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death, or makes a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession or enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom, or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time

of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

* * * * *

SEC. 81.99 Personal liability.—If the executor, before paying all the estate tax, pays, in whole or in part, any debt due by the decedent or the decedent's estate, or distributes any portion of the estate, he is personally liable, to the extent of such payment or distribution, for so much of the estate tax as remains due and unpaid.

The term "executor" includes every person in actual or constructive possession of any property of the decedent if there is no appointed, qualified, and acting personal representative within the United States. For provisions of the statute and regulations prescribing conditions authorizing release of the executor from his personal liability for payment of the tax, see section 825 and section 81.71.

If the tax in respect of a transfer of property includible in the gross estate under the provisions of section 811(c), or in respect of insurance receivable by a beneficiary other than the estate and includible in the gross estate under the provisions of section 811(g), is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax.*

EXAMINATION OF RECORDS AND TAKING OF TESTIMONY

SEC. 3614. [Chapter 34.] EXAMINATION OF BOOKS AND WITNESSES.

(a) **TO DETERMINE LIABILITY OF THE TAXPAYER.**—The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

(b) **TO DETERMINE LIABILITY OF A TRANSFEE.**—The Commissioner, for the purpose of determining the liability at law or in equity of a transferee of the property of any person with respect to any Federal taxes imposed upon such person, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon such liability, and may

require the attendance of the transferor or transferee, or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter, with power to administer oaths to such person or persons.

SEC. 3633. [Chapter 34.] JURISDICTION OF DISTRICT COURTS.

(a) To ENFORCE SUMMONS.—If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

* * * * *

SEC. 3800. [Chapter 38.] JURISDICTION OF DISTRICT COURTS TO ISSUE ORDERS, PROCESSES, AND JUDGMENTS.

The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws.

SEC. 81.100 Securing evidence; taking testimony.—In order to ascertain the correctness of a return, or to make a return if none has been made, the Commissioner has power to require the attendance, and to take the testimony, of the person rendering the return, or any officer or employee of such person, or any other person having knowledge in the premises. Such persons may be required to produce any relevant book, paper, or other record. The Commissioner also is authorized, for the purpose of determining the liability at law or in equity of a transferee of the property of any person with respect to any Federal taxes imposed upon such person, to examine any books, papers, records, or memoranda bearing upon such liability and may require the attendance of the transferor or transferee, or any officer or employee of such person and take his testimony with reference to the matter. The Commissioner has the authority to administer oaths to the persons required to testify. The power and authority herein described may be exercised by any officer or employee of the Bureau of Internal Revenue, including the field force, designated by the Commissioner for that purpose. (For penalties, see section 81.90.)*

SEC. 81.101 Power to compel compliance.—If any person is summoned to appear and testify, or to produce books, papers, or other data, the District Court of the United States for the district in

which such person resides has power to compel the giving of the testimony, the production of the books, papers, or data, and to issue any appropriate process, writ, or order.*

REMEDIES FOR COLLECTION AND PROCEEDINGS FOR ENFORCING LIABILITY OF A TRANSFEREE OR FIDUCIARY

SEC. 822. [Part II, Subchapter A.] PAYMENT OF TAX.

(a) TIME OF PAYMENT.—

* * * * *

(2) EXTENSION OF TIME.—Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part * * *. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of extension, and the running of the statute of limitations for assessment and collection, as provided in section 874, shall be suspended for the period of any such extension.

SEC. 871. [Part IV, Subchapter A.] PROCEDURE IN GENERAL.

* * * * *

(h) EXTENSION OF TIME FOR PAYMENT OF DEFICIENCY.—Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner, under regulations prescribed by the Commissioner, with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax), may grant an extension for the payment of such deficiency * * *. In such case the running of the statute of limitations for assessment and collection, as provided in section 874, shall be suspended for the period of any such extension.

SEC. 874. [Part IV, Subchapter A.] PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION.

* * * * *

(a) GENERAL RULE.—Except as provided in subsection (b) the amount of estate taxes imposed by this subchapter shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of three years after the return was filed.

(b) EXCEPTIONS.—

(1) FALSE RETURN OR NO RETURN.—In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(2) COLLECTION AFTER ASSESSMENT.—Where the assessment of any tax imposed by this subchapter has been made within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within six years after the assessment of the tax, or

(2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the executor.

SEC. 900. [Part IV, Subchapter A.] TRANSFERRED ASSETS.

(a) **METHOD OF COLLECTION.**—The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this subchapter (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) **TRANSFEREES.**—The liability, at law or in equity, of a transferee of property of a decedent, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed by this subchapter.

(2) **FIDUCIARIES.**—The liability of a fiduciary under section 3467 of the Revised Statutes (U. S. C., Title 31, § 192) in respect of the payment of any such tax from the estate of the decedent.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) **PERIOD OF LIMITATION.**—The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the executor.

(2) If a court proceeding against the executor for the collection of the tax has been begun within the period provided in paragraph (1)—then within one year after return of execution in such proceeding.

(c) **SUSPENSION OF RUNNING OF STATUTE OF LIMITATIONS.**—The running of the statute of limitations, upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under section 871(a) to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

(d) **PROHIBITION OF SUITS TO RESTRAIN ENFORCEMENT OF LIABILITY OF TRANSFEE OR FIDUCIARY.**—No suit shall be maintained in any court for the purpose of restraining the assessment or collection of (1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any estate tax, or (2) the amount of the liability of a fiduciary under section 3467 of the Revised Statutes (U. S. C., Title 31, § 192) in respect of any such tax.

(e) **DEFINITION OF "TRANSFEEE".**—As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee.

SEC. 3653. [Chapter 36.] PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.

(a) **TAX.**—Except as provided in sections 272(a), 871(a) and 1012(a), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

(b) **LIABILITY OF TRANSFEREE OR FIDUCIARY.**—No suit shall be maintained in any court for the purpose of restraining the assessment or collection of (1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any income, war-profits, excess-profits, or estate tax, (2) the amount of the liability, at law or in equity, of a transferee of property of a donor in respect of any gift tax, or (3) the amount of the liability of a fiduciary under section 3467 of the Revised Statutes (U. S. C., Title 31, § 192) in respect of any such tax.

SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, * * *.

SEC. 81.102 Remedies for collection and administrative proceedings for enforcing liability of a transferee or fiduciary.—(a) *Remedies for collection.*—Three remedies are provided for the collection of the estate tax imposed by the Internal Revenue Code: (1) The collector may issue warrant of distraint authorizing the seizure and sale of any or all of the assets of the estate. (See section 3690 of the Internal Revenue Code.) (2) The collector may commence in any court of the United States appropriate proceedings, in the name of the United States, to subject the property of the decedent to sale under the judgment or decree of the court. (3) The personal liability of the executor and of certain transferees, trustees, and beneficiaries, set forth in section 81.99, may be enforced by any appropriate action.

The period of limitation, except in case of fraud or in case no return was filed, for collection of the tax by distraint or suit is six years after assessment if assessment of the tax was made within the statutory period of limitation or prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the executor. If an extension of time for payment of tax is granted under the provisions of section 822(a)(2) or section 871(h), the running of the statute of limitations on collection by distraint or suit is suspended for the period of such extension.

(b) *Administrative proceedings for enforcing liability of a transferee or fiduciary.*—The amount for which a transferee of the property of a decedent is liable, at law or in equity, and the amount of the personal liability of a fiduciary under section 3467 of the Revised Statutes, as amended, in respect of any estate tax imposed by the Internal Revenue Code, whether shown on the return of the executor or determined as a deficiency in the tax, shall be assessed against such transferee or such fiduciary, as the case may be, and collected and paid, in the same manner and subject to the same provisions and limitations as in the case of a deficiency, except as hereinafter provided.

The term "transferee" as used in section 900 includes an heir, legatee, devisee, and distributee of an estate of a deceased person.

The period of limitation for assessment of the liability of a transferee or of a fiduciary is as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the executor. (See sections 871, 872, 874, and 875, and section 81.74.)

(2) If a court proceeding against the executor for the collection of the tax has been begun within the period of limitation for the bringing of such proceeding, then within one year after the return of execution in such proceeding.

If a notice of the liability of a transferee, or the liability of a fiduciary, has been mailed to such transferee or to such fiduciary under the provisions of section 871(a) (see section 81.73), then the running of the statute of limitations shall be suspended for the period in which the Commissioner is prohibited from making the assessment (and in any event, if a proceeding in respect of the liability is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

If assessments have been made against several persons covering the same tax liability, and payment of such liability by one or more such persons has been duly certified to the Commissioner, the Commissioner, for the purpose of temporarily relieving the collector from liability under section 3950 of the Internal Revenue Code, may authorize him to take credit temporarily with respect to the assessments not specifically paid. Such action, however, shall not constitute an abatement and shall not discharge the liability of the persons concerned.*

RECORDS, STATEMENTS, AND SPECIAL RETURNS

SEC. 821. [Part II, Subchapter A.] RETURNS.

* * * * *

(d) RECORDS, STATEMENTS, AND RETURNS.—Every person liable to any tax imposed by this subchapter, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

* * * * *

SEC. 3603. [Chapter 34.] NOTICE REQUIRING RECORDS, STATEMENTS, AND SPECIAL RETURNS.

Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as the Commissioner deems sufficient to show whether or not such person is liable to tax.

SEC. 3632. [Chapter 34.] AUTHORITY TO ADMINISTER OATHS, TAKE TESTIMONY, AND CERTIFY.

(a) INTERNAL REVENUE PERSONNEL.—

(1) PERSONS IN CHARGE OF ADMINISTRATION OF INTERNAL REVENUE LAWS GENERALLY.—Every collector, deputy collector, internal revenue agent, and internal revenue officer assigned to duty under an internal revenue agent, is authorized to administer oaths and to take evidence touching any part of the administration of the internal revenue laws with which he is charged, or where such oaths and evidence are authorized by law or regulation authorized by law to be taken,

* * * * *

(b) OTHERS.—Any oath or affirmation required or authorized by any internal revenue law or by any regulations made under authority thereof may be administered by any person authorized to administer oaths for general purposes by the law of the United States, or of any State, Territory, or possession of the United States, or of the District of Columbia, wherein such oath or affirmation is administered, or by any consular officer of the United States. This subsection shall not be construed as an exclusive enumeration of the persons who may administer such oaths or affirmations.

SEC. 81.103 Executor's duty to keep records.—It is the duty of the executor to keep such records as the Commissioner may require. Executors are required to keep such complete and detailed records of the affairs of the estate as will enable the Commissioner to determine accurately the amount of the tax liability.*

SEC. 81.104 Executor's duty to render statements.—It is the duty of the executor not only to make the formal return, but also to render any other sworn statement which the Commissioner may require for the purpose of determining whether a tax liability exists and, if so, the extent thereof.*

ESTATES ADMINISTERED IN THE UNITED STATES COURT FOR CHINA

SEC. 851. [Part II, Subchapter A.] CITIZENS WITH ESTATES IN CHINA.

The term "resident" as used in this subchapter includes a citizen of the United States with respect to whose property any probate or administration proceedings are had in the United States Court for China.

SEC. 920. [Part IV, Subchapter A.] PAYMENT OF TAX.

In the case of a resident within the meaning of section 851—

(a) TO CLERK OF UNITED STATES COURT FOR CHINA.—Where no part of the gross estate of the decedent is situated in the United States at the time of his death, the total amount of tax due under this subchapter shall be paid to or collected by the clerk of the United States Court for China;

(b) TO COLLECTOR.—Where any part of the gross estate of the decedent is situated in the United States at the time of his death, the tax due under this subchapter shall be paid to or collected by the collector

of the district in which is situated the part of the gross estate in the United States, or, if such part is situated in more than one district, then the collector of such district as may be designated by the Commissioner.

SEC. 921. [Part IV, Subchapter A.] AUTHORITY OF CLERK OF UNITED STATES COURT FOR CHINA TO ACT AS COLLECTOR.

For the purpose of section 920 the clerk of the United States Court for China shall be a collector for the territorial jurisdiction of such court, and taxes shall be collected by and paid to him in the same manner and subject to the same provisions of law, including penalties, as the taxes collected by and paid to a collector in the United States.

NOTICE OF PERSONS ACTING AS FIDUCIARY

SEC. 901. [Part IV, Subchapter A.] NOTICE OF FIDUCIARY RELATIONSHIP.

(a) **FIDUCIARY OF DECEDENT.**—Upon notice to the Commissioner that any person is acting as executor, such person shall assume the powers, rights, duties, and privileges of an executor in respect of the tax imposed by this subchapter until notice is given that such person is no longer acting as executor.

(b) **FIDUCIARY OF TRANSFEREE.**—Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 900, the fiduciary shall assume on behalf of such person the powers, rights, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person), until notice is given that the fiduciary capacity has terminated.

(c) **MANNER OF NOTICE.**—Notice under subsection (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

(d) **ADDRESS FOR NOTICE OF LIABILITY.**—In the absence of any notice to the Commissioner under subsection (a) or (b), notice under this subchapter of a deficiency or other liability, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for the purposes of this subchapter.

SEC. 81.105. Notice of persons acting as fiduciary.—The “notice to the Commissioner” provided for in section 901 shall be in writing signed by the fiduciary and filed with the Commissioner, setting forth the name and address of the person for whom he is acting in a fiduciary capacity and also the nature of the liability of such person, accompanied by satisfactory evidence of his authority to act for such person in the fiduciary capacity. If the fiduciary capacity exists by order of court, a certified copy of the order of the court may be regarded as such satisfactory evidence. The written notice to the Commissioner need not be accompanied by evidence of the authority of the fiduciary to act if there is already on file with the Commissioner satisfactory evidence of the authority to act. Any such written notice which has

been filed with the Commissioner since the enactment of the Internal Revenue Code shall be considered as sufficient notice to the Commissioner within the meaning of section 901 if and when there is or has been filed with the Commissioner the satisfactory evidence herein provided for. When the fiduciary capacity has terminated, the fiduciary, in order to be relieved of any further duty or liability as such, must file with the Commissioner written notice that the fiduciary capacity has terminated as to him, accompanied by satisfactory evidence of the termination of the fiduciary capacity. Such written notice should state the name and address of the person, if any, who has been substituted as fiduciary.

This section, made under the provisions of section 901, shall not be taken to abridge in any way the powers and duties of fiduciaries provided for in other sections of the Internal Revenue Code.*

MISCELLANEOUS PROVISIONS

SEC. 840. [Part II, Subchapter A.] OTHER LAWS APPLICABLE.

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this subchapter.

SEC. 3791. [Chapter 38.] RULES AND REGULATIONS.

(a) AUTHORIZATION.—

(1) IN GENERAL.—* * * the Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this title.

(2) IN CASE OF CHANGE IN LAW.—The Commissioner may make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue.

(b) RETROACTIVITY OF REGULATIONS OR RULINGS.—The Secretary, or the Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the internal revenue laws, shall be applied without retroactive effect.

SEC. 3802. [Chapter 38.] SEPARABILITY CLAUSE.

If any provision of this title, or the application thereof to any person or circumstances, is held invalid, the remainder of the title, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

In pursuance of the Internal Revenue Code, approved February 10, 1939, and applicable only to estate taxes on estates of decedents dying after that date, the foregoing regulations are hereby pre-

scribed and Regulations 80 (1937 Edition), as amended by Treasury decisions relating thereto, insofar as they relate or have been made applicable to the estate taxes imposed by the Internal Revenue Code, are hereby superseded.

NORMAN D. CANN,

Acting Commissioner of Internal Revenue.

Approved: February 18, 1942.

JOHN L. SULLIVAN,

Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register February 23, 1942, 11:54 a. m.)

APPENDIX

INSPECTION OF RETURNS

SEC. 55. [Chapter I.] PUBLICITY OF RETURNS.

(a) PUBLIC RECORD AND INSPECTION.—

* * * * *

(2) (as amended by section 507 of the Second Revenue Act of 1940) And all returns made under this chapter, subchapters A, B, D, and E of chapter 2, subchapter B of chapter 3, chapters 4, 7, 12, and 21, subchapter A of chapter 29, and subchapters A and B of chapter 30, shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

(3) Whenever a return is open to the inspection of any person a certified copy thereof shall, upon request, be furnished to such person under rules and regulations prescribed by the Commissioner with the approval of the Secretary. The Commissioner may prescribe a reasonable fee for furnishing such copy.

* * * * *

(d) INSPECTION BY COMMITTEES OF CONGRESS—

(1) COMMITTEES ON WAYS AND MEANS AND FINANCE.—

(A) The Secretary and any officer or employee of the Treasury Department, upon request from the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, or a select committee of the Senate or House specially authorized to investigate returns by a resolution of the Senate or House, or a joint committee so authorized by concurrent resolution, shall furnish such committee sitting in executive session with any data of any character contained in or shown by any return.

(B) Any such committee shall have the right, acting directly as a committee, or by or through such examiners or agents as it may designate or appoint, to inspect any or all of the returns at such times and in such manner as it may determine.

(C) Any relevant or useful information thus obtained may be submitted by the committee obtaining it to the Senate or the House, or to both the Senate and the House, as the case may be.

(2) JOINT COMMITTEE ON INTERNAL REVENUE TAXATION.—The Joint Committee on Internal Revenue Taxation shall have the same right to obtain data and to inspect returns as the Committee on Ways and Means or the Committee on Finance, and to submit any relevant or useful information thus obtained to the Senate, the House of Representatives, the Committee on Ways and Means, or the Committee on Finance. The Committee on Ways and Means or the Committee on Finance may submit such information to the House or to the Senate, or to both the House and the Senate, as the case may be.

TREASURY DECISION 4929, AS AMENDED

[Title 26—Internal Revenue—Code of Federal Regulations (1939 Sup.).—Chapter I, Subchapter E, Part 458, Subpart F]

Regulations governing the inspection of certain returns under the Internal Revenue Code.¹

TREASURY DEPARTMENT,
Washington, D. C.

To Collectors of Internal Revenue and Others Concerned:

* * * * *

SUBPART C.—ESTATE AND GIFT TAX RETURNS UNDER THE INTERNAL REVENUE CODE

SEC. 463C.20. *General.*—Estate tax returns and notices and gift tax returns, filed under the Internal Revenue Code, shall be treated as privileged communications and shall not be inspected nor their contents disclosed except as hereinafter provided.

SEC. 463C.21. *Application for inspection.*—Upon application to the collector, internal revenue agent in charge, or Commissioner, an estate tax return or notice may be inspected by the executor, or his successor in office, or by his duly authorized attorney in fact. Upon like application a gift tax return may be inspected by the donor or his duly authorized attorney in fact.

SEC. 463C.22. *Disclosures for investigation purposes.*—An internal revenue officer engaged in an official investigation of an estate tax or gift tax liability may disclose the returned value of any item or the amount of any specific deduction, or other limited information, if such disclosure is necessary in order to verify the same or to arrive at a correct determination of the tax. This right of disclosure, however, is limited to the purposes of the investigation, and in no case extends to such information as the amount of the estate, the amount of tax, or other general data.

SEC. 463C.23. *Inspection by State officials.*—A return or notice may be exhibited, or information contained therein may be disclosed, to an officer of any State, for official use in connection with an estate, inheritance, legacy, succession, gift, or other tax of the State, provided a like cooperation is given by the State to the Commissioner or his representatives for use in the administration of the Federal tax laws. Such officer may also be permitted to inspect schedules, lists, and other statements designed to be supplemental to or to become a part of, the original return, and other records and reports which contain information included or required by statute to be included in the return.

SEC. 463C.24. *Inspection discretionary with Commissioner in certain cases.*—If any other person has a material interest in ascertaining any fact disclosed by the return, or in obtaining information as to the payment of the tax, he may make a written application to the Commissioner for such information, setting forth the nature of his interest and the purpose of the application. Thereupon, the Commissioner may permit an inspection of, or furnish a copy of the return, or may furnish such information as he deems advisable.

SUBPART D.—GENERAL PROVISIONS

SEC. 463C.30. *Scope.*—The following provisions, unless otherwise stated, are applicable to all returns referred to in Subparts B and C of these regulations.

¹ Sections 463C.0 to 463C.38 are issued under authority contained in secs. 55(a), 508, 603, 702(a), 1204, and 1604(c) of the Internal Revenue Code (53 Stat. 29, 111, 116, 171, 186).

SEC. 463C.31. *Permission to inspect.*—The Commissioner, upon written application setting forth fully the reason for the request, may grant permission for the inspection of returns in accordance with these regulations.

SEC. 463C.32. *Treasury Department officials and employees.*—The officers and employees of the Treasury Department whose official duties require inspection of returns may inspect any such returns without making such written application. If the head of a bureau or office in the Treasury Department, not a part of the Internal Revenue Bureau, desires to inspect, or to have an employee in his bureau or office inspect a return, in connection with some matter officially before him, for reasons other than tax administration purposes, the inspection may, in the discretion of the Secretary, be permitted upon written application to him by the head of such bureau or office, showing in detail why the inspection is desired.

SEC. 463C.33. (a) *Inspection by branch of Government other than Treasury Department.*—Except as provided in section 463C.34, if the head of an executive department (other than the Treasury Department), or of any other establishment of the United States Government, desires to inspect or to have some other officer or employee of his branch of the service inspect a return in connection with some matter officially before him, the inspection may, in the discretion of the Secretary of the Treasury, be permitted upon written application to him by the head of such executive department or other Government establishment. The application shall be signed by such head and shall show in detail why the inspection is desired, the name and address of the taxpayer who made the return, and the name and official designation of the person it is desired shall inspect the return. The information obtained under this section and section 463C.32 may be used as evidence in any proceeding, conducted by or before any department or establishment of the United States, or to which the United States is a party.

* * * * *

SEC. 463C.34. *Inspection by Government attorneys.*—Any return shall be open to inspection by a United States attorney or by an attorney of the Department of Justice where necessary in the performance of his official duties. The request for inspection shall be in writing and, except as provided in section 463C.37, shall be addressed to the Commissioner, and shall state the purpose for which inspection is desired. It may be signed by the Attorney General, the Assistant to the Attorney General, an Assistant Attorney General, or a United States attorney.

SEC. 463C.35. *Information returns.*—Information returns, schedules, lists, and other statements designed to be supplemental to, or to become a part of, the returns shall be subject to the same rules and regulations as to inspection as are the returns themselves. In any case where inspection of the return is authorized by these regulations, the Commissioner may, in his discretion, permit inspection of other records and reports which contain information included or required by statute to be included in the return.

SEC. 463C.36. *Place of inspection.*—Generally, returns may be inspected only in the Bureau of Internal Revenue, Washington, D. C., unless such returns are in the custody of a collector of internal revenue or internal revenue agent in charge or the head of a field division of the Technical Staff, in which event the returns may be inspected in the office of such collector or agent in charge or head of division, but only in the presence of an internal revenue officer, designated by the collector or agent or head of division for that purpose.

SEC. 463C.37. Applications for inspection.—Except as provided in section 463C.33, and as hereinafter provided, all applications for permission to inspect returns must be made in writing to the Commissioner of Internal Revenue. When a return is in the custody of a collector of internal revenue or internal revenue agent in charge or the head of a field division of the Technical Staff, such collector or revenue agent in charge or head of division, upon written application to him, is authorized to permit the inspection of such return by a United States attorney, or an attorney in the Department of Justice, or by the taxpayer or his duly authorized attorney in fact, in accordance with these regulations.

* * * * *

HERBERT E. GASTON,
Acting Secretary of the Treasury.

Approved: August 28, 1939.

FRANKLIN D. ROOSEVELT,
The White House.

(Filed with the Division of the Federal Register August 29, 1939, 3:23 p. m.)

**EXECUTIVE ORDER NO. 8230—AUTHORIZING THE INSPECTION OF CERTAIN RETURNS
MADE UNDER THE INTERNAL REVENUE CODE**

By virtue of the authority vested in me by section 55 (a) of the Internal Revenue Code (53 Stat. 29), it is hereby ordered that the following-designated returns made under the said Code shall be open to inspection in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in the Treasury Decision relating to the inspection of such returns, approved by me this date:

Income (including income of personal holding companies and unjust enrichment income), excess-profits, capital stock, estate, and gift tax returns, and returns of employment tax on employers under Subchapter C of Chapter 9 of the Internal Revenue Code.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
August 28, 1939.

(Filed with the Division of the Federal Register August 29, 1939, 3:23 p. m.)

TREASURY DECISION 4945

[Title 26—Internal Revenue—Code of Federal Regulations (1939 Sup.).—Chapter I,
Subchapter E, Part 458, Subpart H]

Use of original returns open to inspection in accordance with Treasury Decision 4929; furnishing of copies of returns; and inspection of returns of corporations by State officers and shareholders.¹

¹ Sections 463D.0 to 463D.9 are issued under authority contained in sections 55, 62, 508, 603, 702 (a), 1204, 1207, 1604 (c), and 3791 of the Internal Revenue Code (53 Stat. 29, 32, 111, 116, 171, 186, 467).

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

Collectors of Internal Revenue and Others Concerned:

* * * * *

SEC. 463D.0. *Introductory.*— * * *

Pursuant to sections 55 * * * and 3791 of the Internal Revenue Code, the following rules and regulations are hereby prescribed with respect to * * * the furnishing of copies of, returns open to inspection in accordance with Treasury Decision 4929, * * *.

* * * * *

GENERAL PROVISIONS

* * * * *

SEC. 463D.5. *Furnishing of copies of returns.*—A copy of a return may be furnished to any person who is entitled to inspect such return upon written application therefor and the submission of evidence satisfactory to the Commissioner of his right to receive the same, except that if a return is in the custody of a collector or an internal revenue agent in charge or the head of a field division of the Technical Staff, such collector or agent in charge or head of division may furnish a copy of such return to a United States attorney or an attorney of the Department of Justice, or to the taxpayer or his duly authorized attorney in fact, in accordance with these regulations. Certified copies will be furnished only upon specific request therefor sent to the Commissioner at Washington.

The Commissioner may prescribe a reasonable fee for furnishing copies of returns.

* * * * *

SEC. 463D.8. *Terms used.*—Any word or term used in these regulations which is defined in any chapter of the Internal Revenue Code shall be given the definition contained in the chapter which is applicable with respect to the particular return made.

SEC. 463D.9. *Prior regulations under Code superseded.*—This Treasury decision supersedes Treasury Decision 4878, approved January 4, 1939, only in so far as such Treasury decision was made applicable by Treasury Decision 4885, approved February 11, 1939, to returns made under the Internal Revenue Code.

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved: September 20, 1939.

JOHN W. HANES,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register September 22, 1939, 12: 53 p. m.)

PAYMENT OF TAX WITH UNITED STATES TREASURY NOTES

TREASURY DECISION 5109

[Title 26—Internal Revenue—Code of Federal Regulations (1942 Sup.).—Chapter I, Subchapter E, Part 471]

Regulations governing the acceptance of Treasury notes of Tax Series A-1943, B-1943, A-1944, and B-1944 in payment of income, estate, and gift taxes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

To Collectors of Internal Revenue and Others Concerned:

SEC. 471.1. *Acceptance of Treasury notes of Tax Series A-1943, B-1943, A-1944, and B-1944 in payment of income, estate, and gift taxes.*—Notes of the United States designated as Treasury notes of Tax Series A-1943, Treasury notes of Tax Series B-1943, Treasury notes of Tax Series A-1944, and Treasury notes of Tax Series B-1944 may be accepted in payment of income taxes (current and back personal and corporation taxes, and excess-profits taxes) and estate and gift taxes (current and back), at par and interest accrued to the month, inclusive, in which presented (but no accrual beyond the maturity date). Collectors of internal revenue are authorized and directed to accept the notes if at least one full calendar month intervenes between the month of acceptance and the month of purchase (as shown by the issuing agent's dating stamp on each note). For example, a note of Tax Series A-1944 purchased in January, 1942, may be accepted in March, 1942, but such a note purchased in February, 1942, may not be accepted until April, 1942. The notes may be accepted only in payment of income, estate, and gift taxes (current and back) due from the original purchaser thereof or his estate. The notes shall be in the name of the taxpayer (individual, corporation, or other entity) and may be presented for tax payment by the taxpayer, his agent, or his estate. Not more than \$1,200 in principal amount of notes of Tax Series A-1943, or of Tax Series A-1944, or of the two in combination, plus the amount of the accrued interest thereon, may be accepted on account of any one taxpayer's liability for income taxes (including excess-profits taxes), or gift taxes, for any taxable year or on account of any one taxpayer's liability for estate tax; but in the case of the income tax this limitation shall apply separately to husband and wife on a joint return and also to an owner before death and to his estate for the balance of the same year.

Collectors of internal revenue shall not in any case allow credit to a taxpayer on account of notes, or accept notes, for an amount greater than their principal amount plus accrued interest, nor shall notes be accepted in an amount (including accrued interest) greater than the unpaid liability of the taxpayer. The notes shall be forwarded to the collector of internal revenue with whom the tax return is filed, at the risk and expense of the taxpayer, and, for the taxpayer's protection, should be forwarded by registered mail, if not presented in person. (Secs. 3657 and 3791 of the Internal Revenue Code (53 Stat., 447, 467, 26 U. S. C., 1940 ed., 3657, 3791) and sec. 18 of the Second Liberty Bond Act of 1917, as amended (40 Stat., 1309, 31 U. S. C., 1940 ed., 753).)

SEC. 471.2. *Procedure with respect to Treasury notes of Tax Series A-1943, B-1943, A-1944, and B-1944.*—Deposits of Treasury notes of Tax Series A-1943, B-1943, A-1944, and B-1944 received in payment of income, estate, and gift taxes shall be made by the collector of internal revenue in a Federal reserve bank or a branch Federal reserve bank. Prior to deposit the collector of internal revenue will certify on the reverse side of the notes that they were received in payment of income, estate, or gift tax, as the case may be, and will show in the indorsement stamp the date of deposit. (Secs. 3657 and 3791 of the Internal Revenue Code (53 Stat. 447, 467, 26 U. S. C., 1940 ed., 3657, 3791) and sec. 18 of the Second Liberty Bond Act of 1917, as amended (40 Stat., 1309, 31 U. S. C., 1940 ed., 753).)

SEC. 471.3. *Prior Treasury decision superseded.*—Treasury Decision 5064 [I. R. B. 1941-32, 4] is hereby superseded. (Secs. 3657 and 3791 of the Internal Revenue Code (53 Stat., 447, 467, 26 U. S. C., 1940 ed., 3657, 3791) and sec. 18 of the Second Liberty Bond Act of 1917, as amended (40 Stat. 1309, 31 U. S. C., 1940 ed., 753).)

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved January 16, 1942.

D. W. BELL,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register January 17, 1942, 12:48 p. m.)

STATUTES OF LIMITATIONS AS AFFECTED BY PERIOD OF MILITARY SERVICE

SEC. 205. (Soldiers' and Sailors' Civil Relief Act of 1940.)

The period of military service shall not be included in computing any period now or hereafter to be limited by any law for the bringing of any action by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action shall have accrued prior to or during the period of such service. (Oct. 17, 1940, c. 888, sec. 205, 54 Stat. 1181.)

LIST OF THE DIVISIONS AND LOCATIONS OF OFFICES OF INTERNAL REVENUE AGENTS IN CHARGE

(Communications should be addressed:
United States Internal Revenue Agent in Charge,
----- City ----- State -----)

Territory embraced	Name of division	Location of office
Alabama-----	Nashville-----	Nashville, Tenn.
Alaska-----	Seattle-----	Seattle, Wash.
Arizona-----	Los Angeles-----	Los Angeles, Calif.
Arkansas-----	Oklahoma-----	Oklahoma City, Okla.
California: Counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, Eldorado, Fresno, Glenn, Humboldt, Inyo, Kings, Lake, Lassen, Ma- dera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tulare, Tehama, Trinity, Tuolumme, Yolo, and Yuba.	San Francisco-----	San Francisco, Calif.
Counties of Imperial, Kern, Los Angeles, Orange, River- side, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura.	Los Angeles-----	Los Angeles, Calif.
Colorado-----	Denver-----	Denver, Colo.
Connecticut-----	New Haven-----	New Haven, Conn.
Delaware-----	Baltimore-----	Baltimore, Md.
District of Columbia-----	do-----	Do.
Florida-----	Jacksonville-----	Jacksonville, Fla.
Georgia-----	Atlanta-----	Atlanta, Ga.
Hawaii-----	Honolulu-----	Honolulu, Hawaii.
Idaho-----	Salt Lake-----	Salt Lake City, Utah.
Illinois: Counties of Boone, Bureau, Carroll, Cook, De Kalb, Du Page, Grundy, Henry, Jo Daviess, Kane, Kankakee, Kendall, Lake, La Salle, Lee, McHenry, Marshall, Mercer, Ogle, Putnam, Rock Island, Stark, Stephenson, White- side, Will, and Winnebago.	Chicago-----	Chicago, Ill.

Territory embraced	Name of division	Location of office
Illinois—Continued.		
Counties of Adams, Alexander, Bond, Brown, Calhoun, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson, Iroquois, Jackson, Jasper, Jefferson, Jersey, Johnson, Knox, Lawrence, Livingston, Logan, McDonough, McLean, Macon, Macoupin, Madison, Marion, Mason, Massac, Menard, Monroe, Montgomery, Morgan, Moultrie, Peoria, Perry, Piatt, Pike, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Sangamon, Schuyler, Scott, Shelby, Tazewell, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Williamson, and Woodford.	Springfield-----	Springfield, Ill.
Indiana-----	Indianapolis-----	Indianapolis, Ind.
Iowa-----	Omaha-----	Omaha, Nebr.
Kansas-----	Wichita-----	Wichita, Kans.
Kentucky-----	Louisville-----	Louisville, Ky.
Louisiana-----	New Orleans-----	New Orleans, La.
Maine-----	Boston-----	Boston, Mass.
Maryland-----	Baltimore-----	Baltimore, Md.
Massachusetts-----	Boston-----	Boston, Mass.
Michigan-----	Detroit-----	Detroit, Mich.
Minnesota-----	St. Paul-----	St. Paul, Minn.
Mississippi-----	New Orleans-----	New Orleans, La.
Missouri-----	St. Louis-----	St. Louis, Mo.
Montana-----	Salt Lake-----	Salt Lake City, Utah.
Nebraska-----	Omaha-----	Omaha, Nebraska.
Nevada-----	San Francisco-----	San Francisco, Calif.
New Hampshire-----	Boston-----	Boston, Mass.
New Jersey-----	Newark-----	Newark, N. J.
New Mexico-----	Denver-----	Denver, Colo.
New York:		
Counties of Kings, Nassau, Queens, Richmond and Suffolk.	Brooklyn-----	Brooklyn, N. Y.
Manhattan Island south of Twenty-third Street.	Second New York--	New York, N. Y.
Manhattan Island north of Twenty-third Street (including both sides of Twenty-third Street and Blackwells Island, Randalls Island, and Wards Island), and counties of Albany, Bronx (formerly the twenty-third and twenty-fourth wards of New York City), Clinton, Columbia,	Upper New York--	New York, N. Y.

Territory embraced	Name of division	Location of office
New York—Continued.	Upper New York—Continued.	
Dutchess, Essex, Fulton, Greene, Hamilton, Montgomery, Orange, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, Washington, and Westchester.		
Counties of Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Cortland, Delaware, Erie, Franklin, Genesee, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, St. Lawrence, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Wyoming, and Yates.	Buffalo.....	Buffalo, N. Y.
North Carolina.....	Greensboro.....	Greensboro, N. C.
North Dakota.....	St. Paul.....	St. Paul, Minn.
Ohio:	Cincinnati.....	Cincinnati, Ohio.
Counties of Adams, Athens, Brown, Butler, Clark, Clermont, Clinton, Coshocton, Delaware, Fairfield, Fayette, Franklin, Gallia, Greene, Guernsey, Hamilton, Highland, Hocking, Jackson, Knox, Lawrence, Licking, Madison, Marion, Meigs, Miami, Montgomery, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Preble, Ross, Scioto, Union, Vinton, Warren, and Washington.		
Counties of Allen, Ashland, Ashtabula, Auglaize, Belmont, Carroll, Champaign, Columbiana, Crawford, Cuyahoga, Darke, Defiance, Erie, Fulton, Geauga, Hancock, Hardin, Harrison, Henry, Holmes, Huron, Jefferson, Lake, Logan, Lorain, Lucas, Mahoning, Medina, Mercer, Monroe, Ottawa, Paulding, Portage, Putnam, Richland, Sandusky, Seneca, Shelby, Stark, Summit, Trumbull, Tuscarawas, Van Wert, Wayne, Williams, Wood, and Wyandot.	Cleveland.....	Cleveland, Ohio.
Oklahoma.....	Oklahoma.....	Oklahoma City, Okla.
Oregon.....	Seattle.....	Seattle, Wash.

Territory embraced	Name of division	Location of office
Pennsylvania:		
Counties of Adams, Bedford, Berks, Blair, Bradford, Bucks, Carbon, Centre, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York.	Philadelphia-----	Philadelphia, Pa.
Counties of Allegheny, Armstrong, Beaver, Butler, Cambria, Cameron, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, and Westmoreland.	Pittsburgh-----	Pittsburgh, Pa.
Rhode Island-----	New Haven-----	New Haven, Conn.
South Carolina-----	Columbia-----	Columbia, S. C.
South Dakota-----	St. Paul-----	St. Paul, Minn.
Tennessee-----	Nashville-----	Nashville, Tenn.
Texas-----	Dallas-----	Dallas, Texas.
Utah-----	Salt Lake-----	Salt Lake City, Utah.
Vermont-----	Boston-----	Boston, Mass.
Virginia-----	Richmond-----	Richmond, Va.
Washington-----	Seattle-----	Seattle, Wash.
West Virginia-----	Huntington-----	Huntington, W. Va.
Wisconsin-----	Milwaukee-----	Milwaukee, Wis.
Wyoming-----	Denver-----	Denver, Colo.

LIST OF THE FIELD DIVISIONS AND LOCATION OF OFFICES OF THE TECHNICAL STAFF

Name of division	Territorial jurisdiction	Location of office
New England-----	Maine, Massachusetts, New Hampshire, and Vermont.	Boston, Mass.
New York-----	Connecticut and Rhode Island----- New York State: Territory under Brooklyn, Second New York, and Upper New York (Revenue Agents') Divisions.* Territory under Buffalo (Revenue Agents') Division.*	New Haven, Conn. New York, N. Y. Buffalo, N. Y.
Eastern-----	New Jersey----- Pennsylvania: Territory under Philadelphia (Revenue Agents') Division.* Territory under Pittsburgh (Revenue Agents') Division.*	Newark, N. J. Philadelphia, Pa. Pittsburgh, Pa.
Atlantic-----	Maryland and Delaware----- District of Columbia----- Virginia----- West Virginia----- North Carolina-----	Baltimore, Md. Washington, D. C. Richmond, Va. Huntington, W. Va. Greensboro, N. C.
Southern-----	South Carolina and Georgia----- Florida----- Alabama----- Tennessee-----	Atlanta, Ga. Jacksonville, Fla. Birmingham, Ala. Nashville, Tenn.
Central-----	Michigan----- Ohio: Territory under Cleveland (Revenue Agents') Division.* Territory under Cincinnati (Revenue Agents') Division.*	Detroit, Mich. Cleveland, Ohio. Cincinnati, Ohio.
Chicago-----	Kentucky----- Illinois----- Wisconsin----- Indiana----- Minnesota, North Dakota, and South Dakota.	Louisville, Ky. Chicago, Ill. Milwaukee, Wis. Indianapolis, Ind. St. Paul, Minn.
Western-----	Missouri----- Kansas----- Nebraska and Iowa----- Colorado, New Mexico, and Wyoming.	St. Louis, Mo., and Kansas City, Mo. Wichita, Kans. Omaha, Nebr. Denver, Colo.
Southwestern-----	Mississippi and Louisiana----- Oklahoma and Arkansas----- Texas-----	New Orleans, La. Oklahoma City, Okla. Dallas, Tex., and Houston, Tex.
Pacific-----	Counties of California under San Francisco (Revenue Agents') Division,* and Idaho, Montana, Nevada, Utah, and Hawaii. Counties of California under Los Angeles (Revenue Agents') Division,* and Arizona. Washington and Alaska----- Oregon-----	San Francisco, Calif. Los Angeles, Calif. Seattle, Wash. Portland, Oreg.

*For territory included in revenue agents' divisions, see separate list appearing in this Appendix.

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TREASURY DEPARTMENT
UNITED STATES INTERNAL REVENUE

REGULATIONS 67
(1924 EDITION)

RELATING TO

GIFT TAX

UNDER THE

REVENUE ACT OF 1924



WASHINGTON
GOVERNMENT PRINTING OFFICE
1924

These regulations apply to gifts made by residents and nonresidents after December 31, 1923.

(II)

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REGULATIONS RELATING TO THE GIFT TAX UNDER PART II, TITLE III, OF THE REVENUE ACT OF 1924

GIFT TAX

[Except as otherwise specified, all section references are to the revenue act of 1924]

PART II, TITLE III.—GIFT TAX

SEC. 319. For the calendar year 1924 and each calendar year thereafter, a tax equal to the sum of the following is hereby imposed upon the transfer by a resident by gift during such calendar year of any property wherever situated, whether made directly or indirectly, and upon the transfer by a nonresident by gift during such calendar year of any property situated within the United States, whether made directly or indirectly:

1 per centum of the amount of the taxable gifts not in excess of \$50,000;

2 per centum of the amount by which the taxable gifts exceed \$50,000 and do not exceed \$100,000;

3 per centum of the amount by which the taxable gifts exceed \$100,000 and do not exceed \$150,000;

4 per centum of the amount by which the taxable gifts exceed \$150,000 and do not exceed \$250,000;

6 per centum of the amount by which the taxable gifts exceed \$250,000 and do not exceed \$450,000;

9 per centum of the amount by which the taxable gifts exceed \$450,000 and do not exceed \$750,000;

12 per centum of the amount by which the taxable gifts exceed \$750,000 and do not exceed \$1,000,000;

15 per centum of the amount by which the taxable gifts exceed \$1,000,000 and do not exceed \$1,500,000;

18 per centum of the amount by which the taxable gifts exceed \$1,500,000 and do not exceed \$2,000,000;

21 per centum of the amount by which the taxable gifts exceed \$2,000,000 and do not exceed \$3,000,000;

24 per centum of the amount by which the taxable gifts exceed \$3,000,000 and do not exceed \$4,000,000;

27 per centum of the amount by which the taxable gifts exceed \$4,000,000 and do not exceed \$5,000,000;

30 per centum of the amount by which the taxable gifts exceed \$5,000,000 and do not exceed \$8,000,000;

35 per centum of the amount by which the taxable gifts exceed \$8,000,000 and do not exceed \$10,000,000;

40 per centum of the amount by which the taxable gifts exceed \$10,000,000.

SEC. 320. If the gift is made in property, the fair market value thereof at the date of the gift shall be considered the amount of the gift. Where property is sold or exchanged for less than a fair consideration in money or money's worth, then the amount by which the fair market value of the property exceeded the consideration received shall, for the purpose of the tax imposed by section 319, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

ARTICLE 1. **Transfers reached.**—At common law the term "gift" is applied only to voluntary transfers of property made without consideration or compensation therefor. But the taxing act with which these regulations deal employs the term "gift" in a wider and more comprehensive sense, for, while it embraces transactions which at common law amount to gifts, it goes further by including sales and exchanges for less than a fair consideration in money or money's worth. (See sec. 320.) Hence, the statute reaches and taxes all transfers of property made during the calendar year (other than the gifts specified in par. (3) of subdivision (a) and in par. (2) of subdivision (b) of sec. 321), to the extent that they are donative in character and exceed the authorized deductions.

The subject of the gift may consist of any species of property or interest therein, whether legal or equitable. Thus, for example, a taxable transfer may be effected by a transfer of real estate, by the declaration of a trust, by the forgiveness of an indebtedness, the payment of another's debt, the assignment of a judgment, or the transfer of cash, certificates of deposit, or of Federal, State, or municipal bonds. A sale or exchange for a consideration reducible to a money value which is less than a fair consideration amounts to a gift, within the meaning of the statute, to the extent that the fair market value of the property, at the time of the transfer, exceeds the consideration received. If the consideration is not reducible to a money value it is to be wholly disregarded. A transfer which is neither a sale nor an exchange does not involve a gift if there is a valid, even if not an adequate, consideration for the transfer.

The creation of a trust, where the grantor retains the power to revest in himself title to the corpus of the trust, does not constitute a gift subject to tax, but the annual income of the trust which is paid over to the beneficiaries shall be treated as a taxable gift for the year in which so paid. Where the power retained by the grantor to revest in himself title to the corpus is not exercised a taxable transfer will be treated as taking place in the year in which such power is terminated.

The statute embraces donative transfers made by corporations, associations, partnerships, trusts, and estates, as well as those made by individuals. (See art. 25.)

ART. 2. Is not a property tax.—The tax is not laid upon the property, but upon the gift thereof.

ART. 3. Definition of "resident" and "nonresident."—The statute provides (par. (5) of sec. 2 (a)) that the term "United States" when used in a geographical sense, includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

A resident is one who had his domicile in the United States at the date of the gift.

A missionary serving as such under a foreign missionary board of any religious denomination in the United States at the time of making a gift will be presumed to be a resident of the United States, if domiciled therein at the time of his or her commission and departure for such service, and not a nonresident merely by reason of his or her intention to permanently remain in such service. (See sec. 303 (f).) All persons not residents of the United States as above defined, or to whom the presumption just stated does not apply, are nonresidents. The statute takes no account of the citizenship of the donor, but prescribes different rules governing the determination of the tax liability for the gifts made by residents and nonresidents.

A citizen of the United States is a nonresident if his domicile is in Porto Rico, the Philippine Islands, or other foreign country, whereas a subject or citizen of a foreign country is a resident if his domicile is in the United States. A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal.

DETERMINATION OF TAX LIABILITY

ART. 4. Manner of determining liability.—The first step in the determination of tax liability is to ascertain the total amount of the gifts made during the calendar year. (See art. 1.) The second step is to subtract from this amount the total deductions authorized in order to arrive at the excess amount of the gifts over the deductions. (See arts. 8 to 16, inclusive, as to residents, and arts. 19 to 21, inclusive, as to nonresidents.) One of the deductions authorized with respect to gifts made by a resident donor is the specific sum of \$50,000. No such deduction is authorized with respect to gifts made by a nonresident donor. There is no basis for the tax where the total amount of gifts does not exceed the deductions. The third step is to obtain the sum of certain percentages of successive portions of the excess, as provided by the act. (See art. 6.)

ART. 5. Rates of tax.—A table of the rates is given below:

Rates of gift tax

Blocks of taxable gifts			Per cent
Exceeding—	Not exceeding—	Amount of block	
	\$50,000	\$50,000	1
\$50,000	100,000	50,000	2
100,000	150,000	50,000	3
150,000	250,000	100,000	4
250,000	450,000	200,000	6
450,000	750,000	300,000	9
750,000	1,000,000	250,000	12
1,000,000	1,500,000	500,000	15
1,500,000	2,000,000	500,000	18
2,000,000	3,000,000	1,000,000	21
3,000,000	4,000,000	1,000,000	24
4,000,000	5,000,000	1,000,000	27
5,000,000	8,000,000	3,000,000	30
8,000,000	10,000,000	2,000,000	35
10,000,000			40

ART. 6. Computation of tax.—For the purpose of computing the tax, the net amount of gifts is divisible into blocks, each block being taxed at a different and increasing rate. The preceding table gives the amount of the various blocks and the applicable rate of tax under the act. For example, the tax upon the net amount of gifts of \$1,250,000 is computed as follows:

Amount of First block	\$50,000 at 1 per cent	\$500
" " Second block	50,000 at 2 " "	1,000
" " Third block	50,000 at 3 " "	1,500
" " Fourth block	100,000 at 4 " "	4,000
" " Fifth block	200,000 at 6 " "	12,000
" " Sixth block	300,000 at 9 " "	27,000
" " Seventh block	250,000 at 12 " "	30,000
Remainder	250,000 at 15 " "	37,500

Total amount of taxable gifts— 1,250,000 Total tax— 113,500

There is subjoined a table for ascertaining the tax without the detailed computation given above. An illustration of its use is as follows: The amount of taxable gifts in the calendar year is \$1,250,000. By reference to the table it will be seen that the last complete block preceding this amount ends with \$1,000,000 and that the total tax computed on a million dollars under the rates amounts to \$76,000. Upon the remainder of the net amount of the gifts, \$250,000, the tax is computed at the rate set out in the next following line, or at 15 per cent, which amounts to \$37,500. The following result is thus obtained:

Total tax on \$1,000,000	\$76,000
Tax on \$250,000	37,500
Totals \$1,250,000	113,500

Table for computing gift tax

Amount of taxable gifts			Rate (per cent)	Tax	Total
Exceeding—	Not ex- ceeding—	Amount of block			
	\$50,000	\$50,000	1	\$500	\$500
\$50,000	100,000	50,000	2	1,000	1,500
100,000	150,000	50,000	3	1,500	3,000
150,000	200,000	50,000	4	2,000	5,000
200,000	250,000	50,000	5	2,500	7,500
250,000	300,000	50,000	6	3,000	10,500
300,000	350,000	50,000	7	3,500	14,000
350,000	400,000	50,000	8	4,000	18,000
400,000	450,000	50,000	9	4,500	22,500
450,000	500,000	50,000	10	5,000	27,500
500,000	550,000	50,000	11	5,500	33,000
550,000	600,000	50,000	12	6,000	39,000
600,000	650,000	50,000	13	6,500	45,500
650,000	700,000	50,000	14	7,000	52,500
700,000	750,000	50,000	15	7,500	60,000
750,000	800,000	50,000	16	8,000	68,000
800,000	850,000	50,000	17	8,500	76,500
850,000	900,000	50,000	18	9,000	85,500
900,000	950,000	50,000	19	9,500	95,000
950,000	1,000,000	50,000	20	10,000	105,000
1,000,000	1,050,000	50,000	21	10,500	115,500
1,050,000	1,100,000	50,000	22	11,000	126,500
1,100,000	1,150,000	50,000	23	11,500	138,000
1,150,000	1,200,000	50,000	24	12,000	150,000
1,200,000	1,250,000	50,000	25	12,500	162,500
1,250,000	1,300,000	50,000	26	13,000	175,500
1,300,000	1,350,000	50,000	27	13,500	189,000
1,350,000	1,400,000	50,000	28	14,000	203,000
1,400,000	1,450,000	50,000	29	14,500	217,500
1,450,000	1,500,000	50,000	30	15,000	232,500
1,500,000	1,550,000	50,000	31	15,500	248,000
1,550,000	1,600,000	50,000	32	16,000	264,000
1,600,000	1,650,000	50,000	33	16,500	280,500
1,650,000	1,700,000	50,000	34	17,000	297,500
1,700,000	1,750,000	50,000	35	17,500	315,000
1,750,000	1,800,000	50,000	36	18,000	333,000
1,800,000	1,850,000	50,000	37	18,500	351,500
1,850,000	1,900,000	50,000	38	19,000	370,500
1,900,000	1,950,000	50,000	39	19,500	390,000
1,950,000	2,000,000	50,000	40	20,000	410,000

VALUATION OF PROPERTY

ART. 7. (1) *General*.—The law provides that if the gift is made in property, the fair market value thereof at the date of the gift shall be considered the amount of the gift. The fair market value is the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. Where the property is sold within a reasonable period after the gift, and it is shown that the selling price reflects the fair market value thereof as of the date of the gift, the selling price will be accepted. Neither depreciation nor appreciation in value subsequent to the date of the gift will be considered. All relevant facts and elements of value should be considered in every case.

(2) *Real estate*.—The property should not be returned at the local assessed value thereof unless such value represents the fair market value as of the date of the gift.

(3) *Stocks and bonds*.—The value of stocks and bonds listed upon a stock exchange should be determined by taking the mean between the highest and lowest quoted selling prices upon the date of the gift. If the gift was on a Sunday, or holiday, the transaction of the next previous business day will govern. If there were no sales on the date of the gift the value should be determined by taking the mean between the highest and lowest sales upon the nearest date either before or after the date of the gift, if within a reasonable period. If the security is listed upon more than one exchange, the records of the principal exchange should be employed. In valuing listed stocks and bonds the donor should observe care to consult accurate records to obtain values as of the date of the gift.

If the securities are not listed upon an exchange, but are dealt in actively through brokers, or have an active market, the value should

be determined by taking the sale price as of the date of the gift, or, where there was no sale on that date, of the nearest date thereto upon which a sale was made, if within a reasonable period. Securities in which there are occasional transactions, but which are not dealt in actively enough to clearly establish a fair market value, should be valued upon the basis of the nearest sale to the date of the gift, provided such sale was made in the normal course of business between a willing buyer and a willing seller. Where quotations are obtained from brokers, or evidence as to the sale of securities is obtained from the officers of the issuing companies, the donor is requested to preserve in his files the letters furnishing such quotations, or evidence of sale, for inspection when the return is verified by an investigating officer.

Where securities are regularly quoted on a bid and asked basis, and actual sales are not available, the bid price as of the date of the gift, or the nearest date thereto where not quoted as of the date of the gift, will be accepted as the value. In the case of corporate or other bonds for which there is no active market, the value is to be determined by giving consideration to the soundness of the security, the interest yield, the date of maturity, and other relevant factors.

Where, as to any particular security, conditions of sale or ownership are such that the fair market value, determined as indicated above, would not afford a proper basis for valuation, the commissioner, on final audit, will establish the value by considering all relevant factors. In any case where the donor contends that the value as established by the general rules stated above is not the fair market value on the date of the gift, the evidence upon which he bases his contention should be filed with the return.

(4) *Interest in business.*—Care should be taken to arrive at an accurate valuation of any business, or interest therein, which is made the subject of a gift. A fair appraisal as of the date of the gift should be made of all the assets of the business, tangible and intangible, including good will, and the business should be given a net value equal to the amount which a willing purchaser, whether an individual or corporation, would pay therefor to a willing seller in view of the net value of the assets and the demonstrated earning capacity. Special attention should be given to fixing an adequate figure for the value of the good will of the business.

The factors hereinbefore stated relative to the valuation of other property, where applicable, will be considered in determining the valuation of a business or an interest therein. All evidence bearing upon such valuation should be submitted with the return, including copies of reports in any case where examinations of the business have been made by accountants, engineers, or any technical experts as of or near the date of the gift.

(5) *Notes, secured and unsecured.*—The value of notes, whether secured or unsecured, will be presumed to be the amount of unpaid principal, plus accrued interest to the date of the gift, unless the donor establishes a lower value. Where returned at less than face value, plus accrued interest, it must be shown by satisfactory evidence that the note is worth less than the unpaid amount, because of the interest rate, or date of maturity, or other cause, or that it is uncollectible, either in whole or in part, by reason of the insolvency of the party or parties liable, or for other cause, and that the property, if any, pledged or mortgaged as security is insufficient to satisfy it.

(6) *Intangibles.*—Intangibles should be valued in accordance with the rule laid down under (1) above.

(7) *Annuities, life, remainder, and reversionary interests.*—Where the donor purchases an annuity for the donee payable at the end of annual periods throughout the life of the latter the value thereof, as of the date of the gift, should be determined by Table A, a part of this article. The amount payable annually should be multiplied by the figure in column 2 of the table opposite the number of years in column 1 nearest the actual age of the donee at the date of the gift. Where the gift consists of an annuity payable to the donor at the end of annual periods during his life the figure in column 2 of the table opposite the number of years in column 1 nearest the actual age of the donor at the date of the gift should be used. If the annuity is payable semiannually, quarterly, or at the beginning of the year, or for more than one life, or in any other manner rendering inapplicable Table A or Table B (also a part of this article) the case may be stated to the commissioner, who will thereupon make the computation and advise the donor thereof.

Example: The donor purchases for his daughter an annuity of \$10,000, the payments whereof to be made at the end of annual periods during her life. The age of the daughter at the date of the gift is 40 years and 8 months. By reference to the table the figure in column 2 opposite 41 years, the number nearest to the daughter's age, is 14.86102. The present worth of the annuity is therefore \$148,610.20.

Where the gift consisted of an annuity payable at the end of annual periods during a specified number of years, the table marked "B" should be used.

Example: Having purchased an annuity of \$10,000 payable to himself at the end of annual periods throughout a term of 20 years, the donor, when 15 years has elapsed, makes a gift thereof to his son. By reference to the table it is found that the figure in column 2 opposite 5 years, the unexpired portion of the 20-year period, is

4.45182. The present worth of the annuity is, therefore, \$44,518.20 (4.45182 multiplied by 10,000).

Where the donor was entitled to receive the entire income of certain property during the life of Z, or for a term of years, and the annual rate of income for a period equal to or exceeding the life expectancy of Z, or for such term of years, is fixed or definitely determinable at the time of the gift, then the present worth of the donor's right to such income should be computed as explained above in the case of an annuity.

Where the rate of annual income is not determinable, or where the donor was entitled merely to the use of nonincome-producing property, a hypothetical annuity at the rate of 4 per cent of the value of the property should be made the basis of the calculation.

Where the gift is of a remainder or reversionary interest subject to an outstanding life estate, the present worth thereof will be obtained by multiplying the value of the property at the date of the gift by the figure in column 3 of Table A opposite the number of years nearest to the age of the life tenant. Where the remainder or reversion is subject to an estate for a term of years, Table B should be used.

Example: The donor transferred by gift property worth \$50,000 which he was entitled to receive upon the death of his elder brother, to whom the income for life had been bequeathed. The brother at the date of the gift was 31 years of age. By reference to Table A it is found that the figure in column 3 opposite 31 years is 0.31262. The present worth of the remainder interest is, therefore, \$15,631.

TABLE A

Table, single life, 4 per cent, showing the present worth of an annuity, or life interest, and of a reversionary interest

1	2	3	1	2	3
Age	Annuity, or present value of \$1 due at the end of each year during the life of a person of specified age	Reversion, or present value of \$1 due at the end of the year of death of a person of specified age	Age	Annuity, or present value of \$1 due at the end of each year during the life of a person of specified age	Reversion, or present value of \$1 due at the end of the year of death of a person of specified age
0	Annuity	Reversion		Annuity	Reversion
1	\$14,72829	\$0.39507	51	\$12.17919	\$0.49311
2	17.30771	.29586	52	11.88408	.50446
3	18.69578	.24247	53	11.58531	.51595
4	19.15901	.22465	54	11.28325	.52757
5	19.41225	.21491	55	10.97789	.53931
6	19.55301	.20950	56	10.66982	.55116
7	19.61731	.20703	57	10.35931	.56310
8	19.62502	.20673	58	10.04630	.57514
9	19.61097	.20727	59	9.73131	.58726
10	19.53413	.21022	60	9.41474	.59943
11	19.45359	.21332	61	9.09765	.61163
12	19.36943	.21656	62	8.78052	.62383
13	19.28184	.21993	63	8.46412	.63600
14	19.19065	.22344	64	8.14988	.64812
15	19.09590	.22708	65	7.83652	.66017
16	18.99764	.23086	66	7.52476	.67212
17	18.89569	.23478	67	7.21699	.68397
18	18.79010	.23884	68	6.91293	.69565
19	18.68070	.24305	69	6.61301	.70719
20	18.56751	.24740	70	6.31716	.71857
21	18.45038	.25191	71	6.02612	.72976
22	18.32932	.25656	72	5.74008	.74077
23	18.20416	.26138	73	5.45928	.75167
24	18.07471	.26636	74	5.18402	.76215
25	17.94097	.27150	75	4.91463	.77251
26	17.80274	.27682	76	4.65125	.78264
27	17.65984	.28231	77	4.39333	.79254
28	17.51224	.28799	78	4.14288	.80220
29	17.35968	.29386	79	3.89858	.81159
30	17.20225	.29991	80	3.66071	.82074
31	17.03961	.30617	81	3.42909	.82965
32	16.87176	.31262	82	3.20258	.83836
33	16.69846	.31929	83	2.98024	.84691
34	16.51964	.32617	84	2.76106	.85534
35	16.33503	.33327	85	2.54366	.86371
36	16.14437	.34060	86	2.32795	.87200
37	15.94755	.34817	87	2.11384	.88024
38	15.74427	.35599	88	1.90115	.88842
39	15.53421	.36407	89	1.69107	.89650
40	15.31722	.37241	90	1.48540	.90441
41	15.09295	.38104	91	1.28432	.91214
42	14.86102	.38996	92	1.09024	.91961
43	14.62122	.39918	93	.90647	.92667
44	14.37356	.40871	94	.73687	.93320
45	14.11860	.41852	95	.58435	.93906
46	13.85713	.42857	96	.46182	.94378
47	13.58953	.43886	97	.36698	.94742
48	13.31698	.44935	98	.28038	.95229
49	13.03942	.46002	99	.00000	.96154
50	12.75716	.47068			
	12.47032	.48191			

TABLE B

Table, single life, $\frac{1}{2}$ per cent, showing the present worth of an annuity, or life interest, and of a reversionary interest—Continued

1	2	3	1	2	3
Number of years	Present worth of an annuity of \$1, payable at the end of each year, for a certain number of years	Present worth of \$1, payable at the end of a certain number of years	Number of years	Present worth of an annuity of \$1, payable at the end of each year, for a certain number of years	Present worth of \$1, payable at the end of a certain number of years
	<i>Annuity</i>	<i>Reversion</i>		<i>Annuity</i>	<i>Reversion</i>
1	\$0.96154	\$0.961538	16	\$11.65229	\$0.533908
2	1.88609	.924556	17	12.16567	.513373
3	2.77509	.888996	18	12.65929	.493628
4	3.62989	.854804	19	13.13394	.474042
5	4.45182	.821927	20	13.59032	.456387
6	5.24214	.790314	21	14.02816	.438834
7	6.00205	.759918	22	14.45111	.421955
8	6.73274	.730690	23	14.85684	.405726
9	7.43533	.702587	24	15.24696	.390121
10	8.11089	.675564	25	15.62208	.375117
11	8.76047	.649581	26	15.98277	.360689
12	9.38507	.624597	27	16.32958	.346816
13	9.98565	.600574	28	16.66306	.333477
14	10.56312	.577475	29	16.98371	.320651
15	11.11839	.555265	30	17.29203	.308319

DEDUCTIONS—GIFTS BY RESIDENTS

(SEC. 321. In computing the amount of the gifts subject to the tax imposed by section 319, there shall be allowed as deductions:

(a) In the case of a resident—)

(1) An exemption of \$50,000;

ART. 8. **Specific exemption.**—There may be deducted from the total amount of gifts made by any resident donor during the calendar year a specific exemption of \$50,000.

DEDUCTIONS—TRANSFERS FOR PUBLIC, CHARITABLE, RELIGIOUS, ETC., USES

(SEC. 321. In computing the amount of the gifts subject to the tax imposed by section 319, there shall be allowed as deductions:

(a) In the case of a resident—)

(2) The amount of all gifts or contributions made within the calendar year to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or fraternal society, order, or association, operating under the lodge system, but only if such gifts or contributions are to be used by such trustee or trustees or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, and the amount of all gifts or contributions made within the calendar year by such corporation, trustee,

or fraternal society, order, or association for a religious, charitable, scientific, literary, or educational purpose, or for the prevention of cruelty to children or animals, and the amount of all gifts or contributions made within the calendar year to the special fund for vocational rehabilitation authorized by section 7 of the vocational rehabilitation act;

Section 7 of the vocational rehabilitation act is as follows:

SEC. 7. That the board is hereby authorized and empowered to receive such gifts and donations from either public or private sources as may be offered unconditionally. All moneys received as gifts or donations shall be paid into the Treasury of the United States, and shall constitute a permanent fund, to be called the "Special fund for vocational rehabilitation," to be used under the direction of the said board, in connection with the appropriations hereby made or hereafter to be made, to defray the expenses of providing and maintaining courses of vocational rehabilitation; and a full report of all gifts and donations offered and accepted, and all disbursements therefrom, shall be submitted annually to Congress by said board.

Section 7 of the vocational rehabilitation act was repealed and section 12 of the World War veterans' act of 1924 was enacted in lieu thereof June 7, 1924.

Section 12 of the World War veterans' act of 1924 is as follows:

SEC. 12. That the bureau is hereby authorized and empowered to receive, for purposes of benefits provided by Title IV hereof, such gifts and donations from either public or private sources as may be offered unconditionally. All moneys so received as gifts or donations shall be paid into the Treasury of the United States, and shall constitute a permanent fund, to be called the "Special fund for vocational rehabilitation," to be used under the direction of the said bureau in connection with the appropriations hereby made or hereafter to be made, to defray the expenses of providing and maintaining courses of vocational rehabilitation; and a full report of all gifts and donations offered and accepted and all disbursements therefrom shall be submitted annually to Congress by the director.

ART. 9. Transfers for public, charitable, religious, etc., uses.—There may be deducted from the total amount of gifts made by any resident donor during the calendar year the amount of all gifts made (1) to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes; or (2) to or for the use of any corporation or association organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, where no part of the net earnings of the corporation or association inures to the benefit of any private stockholder or individual; or (3) to a trustee or trustees, or to a fraternal society,

order, or association operating under the lodge system, provided such gifts are to be used by such trustee or trustees, fraternal society, order, or association exclusively for one or more of the purposes enumerated in (2); and (4) the amount of all gifts made within the calendar year to the special fund for vocational rehabilitation authorized by section 7 of the vocational rehabilitation act, if made prior to June 8, 1924, and by section 12 of the World War veterans' act of 1924, if made on or after June 8, 1924.

Where a trust is created for both a charitable and a private purpose, deduction may be taken of the amount of the beneficial interest in favor of the former only in so far as such interest is presently ascertainable, and hence severable from the interest in favor of the private use. Thus when money or property is placed in trust to pay the income to an individual during his life and then to pay or deliver the principal to a charitable corporation or to apply it to a charitable purpose the present worth of the remainder interest is deductible. For the manner of determining the value see subdivision 7 of article 7.

The deduction is not limited in the case of resident donors to gifts to domestic corporations or for use within the United States when made to a trustee or trustees, a fraternal society, order, or association operating under the lodge system.

The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State or Territory.

ART. 10. Religious, charitable, scientific, and educational corporations.—A corporation or association to which a gift is made must meet three tests to entitle the donor to deduct the amount thereof: (1) It must be organized and operated for one or more of the purposes specified in the statute; (2) it must be organized and operated *exclusively* for such purpose or purposes; and (3) no part of its net earnings shall inure to the benefit of private stockholders or individuals.

The donor is not deprived of the right to deduct an amount equal to the value of property so transferred by reason of the fact that private individuals are the recipients of the benefits which the corporation or association dispenses. Such right is, however, lost whenever any part of the net earnings of the corporation or association inures to the benefit of a private stockholder or individual. Thus if the shareholders or members of the corporation or association are entitled upon a dissolution thereof to receive the proceeds of its property, including accumulated net earnings, no right of deduction exists, even though the by-laws provide that the share-

holders or members shall not receive dividends or other return upon their shares or interests.

ART. 11. Proof required.—In order to prove the right to this deduction the donor must submit such documents or evidence as may be requested by the commissioner on review.

ART. 12. Where there is a power to divert to other purposes.—Where the donee or trustee is empowered to divert the property or fund, in whole or in part, to a use or purpose which would have rendered it, to the extent that it is subject to such power, not deductible had it been directly so given by the donor, deduction will be limited to that portion, if any, of the property or fund which is exempt from an exercise of such power.

DEDUCTIONS—GIFTS TO INDIVIDUALS NOT IN EXCESS OF \$500

(SEC. 321. In computing the amount of the gifts subject to the tax imposed by section 319, there shall be allowed as deductions:

(a) In the case of a resident—)

(3) Gifts the aggregate amount of which to any one person does not exceed \$500;

ART. 13. Gifts to individuals, when deductible.—The gifts deductible under this section are deductible only to the extent that the amount thereof is included in the total amount of gifts made during the calendar year.

DEDUCTIONS—PROPERTY PREVIOUSLY TAXED

(SEC. 321. In computing the amount of the gifts subject to the tax imposed by section 319, there shall be allowed as deductions:

(a) In the case of a resident—)

(4) An amount equal to the value of any property transferred by gift within the calendar year, which can be identified (A) as having been received by the donor within five years prior to the time of his making such gift, either from another person by gift or from a decedent by gift, bequest, devise, or inheritance, or (B) as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax or an estate tax under this or any prior act of Congress was paid by or on behalf of the donor or the estate of such decedent, as the case may be, and only in the amount of the value placed by the commissioner on such property in determining the value of the gift or the gross estate of such decedent, and only to the extent that the value of such property is included in the total amount of gifts made within the calendar year and not deducted under paragraph (2) or (3) of this subdivision.

ART. 14. Deduction of the value of transfers taxed within five years.—Where there is included in the total amount of gifts made during the calendar year property received by the donor by gift, bequest, devise, or inheritance within five years prior to the donor's gift

thereof, or property acquired in exchange for property so received, the statute authorizes a deduction of the value thereof subject to the following conditions and limitations, namely:

(1) The property constituting the gift must have been received by the donor by gift, bequest, devise, or inheritance within five years prior to the date of his gift thereof.

(2) The property must be identified either as the same which the donor so received or acquired in exchange therefor.

(3) The property must have been included in the total amount of gifts of the person from whom it was received, or formed a part of the gross estate of a decedent from whom it was received by bequest, devise, or inheritance.

(4) A gift tax or an estate tax, as the case may be, must have been paid by or on behalf of such prior donor, or the estate of such decedent.

(5) The property, or that acquired in exchange therefor, in so far as it constitutes a part of the total amount of gifts, is, for the purpose of inclusion therein, to be valued as of the date of the gift.

(6) The deduction, however, can not exceed the value which the commissioner placed upon the property in determining the value of the total amount of gifts of the prior donor, or in determining the value of the gross estate of such decedent.

(7) The deduction is limited to the extent that the value of the property, or that acquired in exchange therefor, is included in the total amount of gifts. (See examples following the second paragraph below.)

(8) The deduction is further limited to the extent that the value of the property, or of that so acquired in exchange, is not deducted under paragraphs (2) or (3) of subdivision (a) of section 321.

(9) The right to the deduction must be fully established by the donor.

Example: The donor's father died January 1, 1920. Included in the father's gross estate was a tract of land comprising 200 acres, upon which the commissioner placed a value for estate tax purposes of \$20,000. The tax on the father's estate was paid. The donor, having inherited the tract from his father, transferred by gift 100 acres thereof on January 2, 1924, the total value of the 200 acres then being \$40,000. The donor included in his gift-tax return the value of the gift of the 100 acres, \$20,000, which was the fair market value thereof as of the date of the gift. Since only one-half of the tract was the subject of the gift, the deduction is limited to one-half of the value placed by the commissioner upon the whole tract when determining the value of the father's gross estate, or \$10,000.

Example: On January 2, 1924, A transferred by gift to B bonds of the then value of \$100,000. In due course a gift-tax return was

filed by A and the tax paid on that basis. On August 1, 1924, B transferred by gift the bonds to C. On the date of the gift to C the bonds were worth \$80,000. In filing his gift-tax return B listed the bonds constituting the gift at a value of \$80,000. Since the value of the bonds, as of the date of the gift by B to C was \$80,000, the deduction is limited to that amount.

ART. 15. Property originally received.—If the property originally received from the prior donor or from a decedent is included in the total amount of gifts, the description thereof must be given and its identity fully established.

ART. 16. Property acquired in exchange.—The deduction for substituted property is limited to property acquired in exchange for the identical property received from a prior donor, or a decedent. It is limited to one exchange, and consequently when the property originally received is sold the right to the deduction is limited to the proceeds of the sale. If, however, the proceeds are reinvested, more than one exchange has been effected and the right to the deduction is lost.

In the case of an exchange the donor must describe and identify fully both the property originally received from the prior donor, or decedent, and the property acquired in exchange therefor. He must also state the date of the transaction by which the exchange was effected and the name and address of the transferee. If the exchange was made by written instrument of public record, a precise reference must be made to the record containing a transcript of the instrument, and, if by instrument not of record, a copy of the instrument itself must be supplied. If there was no written instrument, an affidavit as to the facts of the exchange by one or more persons having personal knowledge of the matter must be furnished.

GIFTS MADE BY NONRESIDENTS

SEC. 319. For the calendar year 1924 and each calendar year thereafter, a tax equal to the sum of the following is hereby imposed upon the transfer by a resident by gift during such calendar year of any property wherever situated, whether made directly or indirectly, and upon the transfer by a nonresident by gift during such calendar year of any property situated within the United States, whether made directly or indirectly: * * *.

ART. 17. Nonresident donors.—All transfers made without consideration, or for less than a fair consideration in money or money's worth, by nonresidents during any calendar year of property situated within the United States (other than the gifts specified in par. (2) of subdivision (b) of sec. 321) are to be returned for the purpose of the tax. As to who is a nonresident, see article 3; and for a statement of what constitutes a "gift" within the meaning of the statute, see article 1.

ART. 18. Situs of property.—The situs of property, both real and personal, for the purpose of the tax is its actual situs. The actual situs of mortgages, bonds, bills and notes, and certificates of stock in any corporation or association wherever created or organized is the place where held.

DEDUCTIONS—GIFTS BY NONRESIDENTS

(Sec. 321. In computing the amount of the gifts subject to the tax imposed by section 319, there shall be allowed as deductions:

(b) In the case of a nonresident—)

(1) The amount of all gifts or contributions made within the calendar year to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or fraternal society, order, or association, operating under the lodge system, but only if such gifts or contributions are to be used within the United States by such trustee or trustees or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, and the amount of all gifts or contributions made within the calendar year by such corporation, trustees, or fraternal society, order, or association for a religious, charitable, scientific, literary, or educational purpose, or for the prevention of cruelty to children or animals, and the amount of all gifts or contributions made within the calendar year to the special fund for vocational rehabilitation authorized by section 7 of the vocational rehabilitation act;

ART. 19. Deductions—Transfers for public, charitable, religious, etc., uses.—The right to deduct the amount of all gifts made by non-residents for public, religious, charitable, scientific, literary, or educational purposes is governed by the same rules as those applying to gifts made by residents (arts. 9 to 12, inclusive), subject, however, to the two following exceptions, namely: (1) That, if the gift be made to a corporation or association, such corporation or association must be one created or organized in the United States; and (2) if made to a trustee or trustees, a fraternal society, order, or association operating under the lodge system, the gift must be for use within the United States.

DEDUCTIONS—GIFTS TO INDIVIDUALS NOT IN EXCESS OF \$500

(Sec. 321. In computing the amount of the gifts subject to the tax imposed by section 319, there shall be allowed as deductions:

(b) In the case of a nonresident—)

(2) Gifts the aggregate amount of which to any one person does not exceed \$500;

ART. 20. Gifts to individuals, when deductible.—The gifts deductible under this section are deductible only to the extent that the amount thereof is included in the total amount of gifts made during the calendar year.

DEDUCTIONS—PROPERTY PREVIOUSLY TAXED

(Sec. 321. In computing the amount of the gifts subject to the tax imposed by section 319, there shall be allowed as deductions:

(b) In the case of a nonresident—)

(3) An amount equal to the value of any property situated in the United States transferred by gift within the calendar year, which can be identified (A) as having been received by the donor within five years prior to the time of his making such gift, either from another person by gift or from a decedent by gift, bequest, devise, or inheritance, or (B) as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax or an estate tax under this or any prior act of Congress was paid by or on behalf of the donor or the estate of such decedent, as the case may be, and only in the amount of the value placed by the commissioner on such property in determining the value of the gift or the gross estate of such decedent, and only to the extent that the value of such property is included within the total amount of gifts made within the calendar year of property situated in the United States and not deducted under paragraph (1) or (2) of this subdivision.

ART. 21. Deduction of value of transfers taxed within five years.—The right to deduct the amount of all gifts made by a nonresident of property received by him, by gift, bequest, devise, or inheritance, from any person within five years prior to the gift, or acquired in exchange for property so received, is governed by the same rules as those applying to gifts made by residents (Arts. 14 to 16, inclusive), subject, however, to the following exception: That such right is limited to the extent that the amount of the value of the property, or of that acquired in exchange therefor, is not deducted under paragraphs (1) or (2) of subdivision (b) of section 321.

ART. 22. Payment of tax.—The provisions relating to rates and payment of the tax are the same in gifts made by nonresidents and by residents. The statute provides that the donor shall pay the tax on or before the 15th day of March of the year succeeding the calendar year in which the gift was made. All checks, drafts, or money orders should be made payable to the order of the collector of internal revenue. (See arts. 37 to 43, inclusive.)

The provisions relating to credits against the estate tax, in cases where a gift tax has been imposed, and thereafter, upon the death of the donor, the amount of the gift is included in his gross estate, are the same respecting gifts made by nonresident and by resident donors.

THE RETURN—GIFTS BY RESIDENTS

Sec. 323. Any person who within the year 1924 or any calendar year thereafter makes any gift or gifts in excess of the deductions allowed by section 321 shall, on or before the 15th day of March, file with the collector a return under oath in duplicate, listing and setting forth therein all gifts and contributions made by him during such calendar year (other than the gifts specified in paragraph (3) of subdivision (a) and in paragraph (2) of subdivision (b) of section 321), and the fair market value thereof when made, and also all sales and exchanges of property owned by him made within such year for less than a fair consideration in money or money's worth, stating therein the fair market value of the property so sold or exchanged and that of the consideration received by him, both as of the date of such sale or exchange.

Arr. 23. **When return required—Date of filing.**—A return on Form 706A is required in the case of every resident donor whose total amount of gifts in the calendar year, as defined in the statute, exceeded the authorized deductions. This return must be filed with the collector for the district in which the donor is domiciled at the time the return is due. It must be filed in duplicate on or before the 15th day of March succeeding the calendar year in which the gift was made. When the due date for filing the return falls on a Sunday or a legal holiday the due date will be the day following such Sunday or legal holiday. If placed in the mails the return should be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the date on which the return is required to be filed. If a return is made and placed in the mails in due course, properly addressed, and postage paid, in ample time to reach the office of the collector on or before the due date, no penalty will attach should the return not be actually received by such officer until subsequent to that date.

EXTENSION OF TIME FOR FILING RETURN

Revised Statutes, section 3176, as amended by section 1003, revenue act, 1924:

* * * If the failure to file a return (other than a return under Title II of the revenue act of 1924) or a list is due to sickness or absence, the collector may allow such further time, not exceeding thirty days, for making and filing the return or list as he deems proper. * * *

ART. 24. **Extension of time by collector.**—In case of sickness or absence, collectors are authorized to grant an extension of time for filing the return for a period not in excess of 30 days from the due date, which extension may be granted either before or after the due

date. An extension of time for filing the return does not in itself operate to extend the time for the payment of the tax, which shall be paid by the donor on or before the 15th day of March of the year succeeding the calendar year in which the gift was made. For extension of time for payment, see article 40.

ART. 25. Persons required to make return.—Any person who, during the calendar year, makes any gift or gifts in excess of the deductions authorized by the statute shall file a return with the collector. (See sec. 323.)

The term "person" means an individual, a trust or estate, a partnership, or a corporation. (Sec. 2 (a) (1).)

Where the donor dies before filing his return, his executor or administrator shall file the return and pay the tax to the collector.

ART. 26. Preparation of return.—The return must be made on Form 706A, copies of which will be supplied by the collector upon application. The return must be filed in duplicate and under oath, and therein must be listed and set forth all gifts made by the donor during the calendar year (other than the gifts specified in par. (3) of subdivision (a) of sec. 321), and the fair market value thereof when made; also all sales and exchanges of property made within the calendar year for less than a fair consideration in money or money's worth, giving the fair market value of the property sold or exchanged and that of the consideration received by the donor, both as of the date of sale or exchange. The deductions claimed must also be fully set forth. The instructions printed on the form of return should be carefully followed. All documents and vouchers used in preparing the return should be retained by the donor, so as to be available for inspection by representatives of the bureau whenever required. Duplicate certified or verified copies of all documents required by the instructions printed on the form, or any documents which the donor may desire to submit, should be filed with the return. For penalties for delinquency in filing return, or for filing a false or fraudulent return, or aiding or advising the preparation or presentation of a false return, see articles 47 to 49, inclusive.

ART. 27. Supplemental data.—In order that the commissioner may determine the correct tax the donor shall furnish such supplemental data as may be deemed necessary by the commissioner. It is, therefore, the duty of the donor to furnish upon request copies of all documents relating to the gift or gifts, appraisal lists of any items included in the total amount of gifts, copies of balance sheets, or other financial statements relating to the value of stock constituting the gift, and any other information obtainable by him that may be found necessary in the determination of the tax. (See arts. 63 and 64.)

RETURN BY COLLECTOR OR COMMISSIONER

Revised Statutes, section 3176, as amended by section 1003 revenue act of 1924:

If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner of Internal Revenue may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. Any return or list so made and subscribed by the commissioner, or by a collector or deputy collector and approved by the commissioner, shall be prima facie good and sufficient for all legal purposes. * * *

ART. 28. Where no return filed, or a false or fraudulent return filed.—Section 3176 of the Revised Statutes provides that if no return is filed within the time prescribed by law, or if a false or fraudulent return is filed, the collector or deputy collector shall make a return. The commissioner may make a return or amend any return made by a collector or deputy collector. A return so made by the commissioner, or made by the collector or deputy collector and approved by the commissioner, is a sufficient basis for assessing the tax. Where a tax is found to be due upon such a return, the donor shall be liable for penalties as well as for the tax.

THE RETURN—INVESTIGATION

ART. 29. Investigation of returns.—Every return for gift tax will be subjected to such investigation and inquiry as may be deemed necessary in order to verify its accuracy and to determine the correct tax. The investigation, when made, will be conducted by special officers of the bureau. The donor should fully cooperate in order that the tax liability may be correctly determined and the case closed. During the course of the field investigation the examining officer will inspect the books and records of the donor relating to the gift, interview the donor and other persons having knowledge of the gift, verify the value of the property constituting the gift and the deductions, and take such other steps as may be necessary in order that the correct amount of tax may be determined.

Upon completion of the investigation the donor will be apprised by the examining officer of his findings, and will be given an opportunity to discuss the case and present such data as he may desire the commissioner to consider in connection with the examining officer's report. Upon the completion of a review and audit by the commissioner, the donor will be advised by letter of the result thereof.

The commissioner will make these investigations as soon as practicable after the filing of the return.

THE RETURN—GIFTS BY NONRESIDENTS

ART. 30. Return of gifts made by nonresidents.—A return on Form 706A must be executed under oath and filed in duplicate with the Commissioner of Internal Revenue, Washington, D. C., or with such collector of internal revenue as the commissioner may designate, on or before the 15th of March of the year succeeding the calendar year in which the gift was made by a nonresident of property situated within the United States.

Copies of Form 706A for use in making the return may be obtained upon application to any collector of internal revenue or to the commissioner. Upon the return must be listed and set forth all gifts made by the nonresident donor during the calendar year (other than the gifts specified in par. (2) of subdivision (b) of sec. 321), and the fair market value thereof when made; also all sales and exchanges of property made within the calendar year for less than a fair consideration in money or money's worth, giving the fair market value of the property sold or exchanged, and that of the consideration received by the donor, both as of the date of sale or exchange. The deductions claimed must also be fully set forth. As to deductions, see articles 19 to 21.

ART. 31. Supplemental data.—For information as to the requirements in the matter of furnishing supplemental data, see articles 27, 63 and 64.

PRIVILEGED CHARACTER OF GIFT-TAX RETURNS

ART. 32. Returns confidential.—All gift-tax returns are treated as privileged communications and may not be exhibited to any person other than the donor or his duly authorized agent, except as stated in article 33. This requirement will be rigidly enforced, and extends to information of a private nature submitted or obtained in connection with a return. The requirement does not operate to prevent internal-revenue officers from disclosing the returned amount of any gift or the amount of any specific deduction, where such disclosure is necessary in order to arrive at a correct determination of the tax. This right of disclosure, however, does not extend to such information as the total amount of the gifts, the amount of tax, or other general data. Nor are the records in possession of the bureau, whether on file with the commissioner or the collector, open to inspection, except as provided in article 33.

ART. 33. Disclosure to persons having material interest.—Where any person other than the donor has a material interest in ascertain-

ing any fact disclosed by the return, or in obtaining information as to the payment of the tax, he shall make a written application to the Commissioner of Internal Revenue for such information, setting forth the nature of his interest and the purpose of the application. The commissioner will review the application, and, if it is approved, the collector will be directed to exhibit the return to the applicant, or give him such information as is specified, or the commissioner may permit an inspection of the return on file in the Bureau, or furnish such information as he deems advisable.

Under no circumstances shall the collector give information to persons other than the donor except upon the written order of the commissioner, and then only to the extent authorized by such order.

If an attorney or other person asks a ruling on a question of law arising in a specific case, the commissioner will require satisfactory evidence of the right to obtain such ruling. Hypothetical questions, however, can not be answered.

For regulations governing the recognition of attorneys, agents, and other persons representing claimants before the Treasury Department, reference should be made to Treasury Department Circular No. 230, dated August 15, 1923, as supplemented, copies of which may be obtained upon application to the secretary of the committee on enrollment and disbarment, Treasury Department, Washington, D. C.

ESTATE TAX PROVISIONS APPLY

SEC. 324. The tax imposed by section 319 shall be paid by the donor on or before the 15th day of March, and shall be assessed, collected, and paid in the same manner and subject, in so far as applicable, to the same provisions of law as the tax imposed by section 301.

ART. 34. **Certain provisions of the estate tax have application.**—The section last quoted from the gift tax title provides that such tax shall be assessed, collected, and paid in the same manner as the estate tax, and shall be subject, in so far as applicable, to the same provisions of law as those imposing the estate tax, and for that reason there will be found set out in these regulations various applicable sections of the estate tax title.

DEFICIENCY TAX

SEC. 307. As used in Part I of this title the term "deficiency" means—

(1) The amount by which the tax imposed by Part I of this title exceeds the amount shown as the tax by the executor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the executor upon his return, or if no return is made by the executor, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax.

APPEALS, ASSESSMENT AND PAYMENT OF TAX AND INTEREST

SEC. 305. * * *

(b) Where the commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the commissioner may extend the time for payment of any such part not to exceed five years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

(c) If the time for the payment is thus extended there shall be collected, as a part of such amount, interest thereon at the rate of 6 per centum per annum from the expiration of six months after the due date of the tax to the expiration of the period of the extension.

* * *

SEC. 308. (a) If the commissioner determines that there is a deficiency in respect of the tax imposed by Part I of this title, the executor, except as provided in subdivision (d), shall be notified of such deficiency by registered mail, but such deficiency shall be assessed only as hereinafter provided. Within 60 days after such notice is mailed the executor may file an appeal with the Board of Tax Appeals established by section 900.

(b) If the board determines that there is a deficiency, the amount so determined shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the commissioner but disallowed as such by the board shall be assessed, but a proceeding in court may be begun, without assessment, for the collection of any part of the amount so disallowed. The court shall include in its judgment interest upon the amount thereof at the rate of 6 per centum per annum from the date prescribed for the payment of the tax to the date of the judgment. Such proceeding shall be begun within one year after the final decision of the board, and may be begun within such year even though the period of limitation prescribed in section 310 has expired.

(c) If the executor does not file an appeal with the board within the time prescribed in subdivision (a) of this section, the deficiency of which the executor has been notified shall be assessed, and shall be paid upon notice and demand from the collector.

(d) If the commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, such deficiency shall be assessed immediately and notice and demand shall be made by the collector for the payment thereof. In such case the assessment may be made (1) without giving the notice provided in subdivision (a) of this section, or (2) before the expiration of the 60-day period provided in subdivision (a) of this section even though such notice has been given, or (3) at any time prior to the final decision by the board

upon such deficiency even though the executor has filed an appeal. If the executor does not file a claim in abatement as provided in section 312, the deficiency so assessed (or, if the claim so filed covers only a part of the deficiency, then the amount not covered by the claim) shall be paid upon notice and demand from the collector.

(e) Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the due date of the tax to the date the deficiency is assessed.

(f) Where it is shown to the satisfaction of the commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the commissioner with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax) may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of two years. If an extension is granted, the commissioner may require the executor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties, as the commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. In such case there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. If the part of the deficiency the time for payment of which is so extended is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 1 per centum a month for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period.

(g) The 50 per centum addition to the tax provided by section 3176 of the Revised Statutes, as amended, shall, when assessed after the enactment of this act in connection with an estate tax, be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of subdivision (e) of this section shall not be applicable.

Sec. 309. (a) (1) Where the amount determined by the executor as the tax imposed by Part I of this title, or any part of such amount, is not paid on the due date of the tax, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 1 per centum a month from the due date until it is paid.

(2) Where an extension of time for payment of the amount so determined as the tax by the executor has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under subdivision (c) of section 305, is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subdivision, interest at the rate of 1 per centum a month shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) Where a deficiency, or any interest assessed in connection therewith under subdivision (e) of section 308, or any addition to the tax provided for in section 3176 of the Revised Statutes, as amended, is not paid in full within 30 days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 1 per centum a month from the date of such notice and demand until it is paid.

(c) If a claim in abatement is filed, as provided in section 312, the provisions of subdivision (b) of this section shall not apply to the amount covered by the claim in abatement.

SEC. 310. (a) Except as provided in section 311 and in subdivision (b) of section 308 and in subdivision (b) of section 312, the amount of the estate taxes imposed by Part I of this title shall be assessed within four years after the return was filed, and no proceeding in court for the collection of such taxes shall be begun after the expiration of five years after the return was filed.

(b) The period within which an assessment is required to be made by subdivision (a) of this section in respect of any deficiency shall be extended (1) by 60 days if a notice of such deficiency has been mailed to the executor under subdivision (a) of section 308 and no appeal has been filed with the Board of Tax Appeals, or (2) if an appeal has been filed, then by the number of days between the date of the mailing of such notice and the date of the final decision by the board.

SEC. 311. (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such a tax may be begun without assessment, at any time.

* * * * *

SEC. 312. (a) If a deficiency has been assessed under subdivision (d) of section 308, the executor, within 30 days after notice and demand from the collector for the payment thereof, may file with the collector a claim for the abatement of such deficiency, or any part thereof, or of any interest or additional amounts assessed in connection therewith, or of any part of any such interest or additional amounts. Such claim shall be accompanied by a bond, in such amount, not exceeding double the amount of the claim, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount of the claim as is not abated, together with interest thereon as provided in subdivision (c) of this section. Upon the filing of such claim and bond, the collection of so much of the amount assessed as is covered by such claim and bond shall be stayed pending the final disposition of the claim.

(b) If a claim is filed as provided in subdivision (a) of this section the collector shall transmit the claim immediately to the commissioner who shall by registered mail notify the executor of his decision on the claim. The executor may within 60 days after such notice is mailed file an appeal with the Board of Tax Appeals. If the claim is denied in whole or in part by the commissioner (or by the board in case an appeal has been filed) the amount, the claim for which is denied, shall be collected as part of the tax upon notice and demand from the collector, and the amount, the claim for which is allowed, shall be abated. A proceeding in court may be begun for any part of the

amount, claim for which is allowed by the board. Such proceeding shall be begun within one year after the final decision of the board, and may be begun within such year even though the period of limitation prescribed in section 310 has expired.

(c) If the claim in abatement is denied in whole or in part, there shall be collected, at the same time as the part of the claim denied, and as a part of the tax, interest at the rate of 6 per centum per annum upon the amount of the claim denied, from the date of notice and demand from the collector under subdivision (d) of section 308 to the date of the notice and demand under subdivision (b) of this section. If the amount included in the notice and demand from the collector under subdivision (b) of this section is not paid in full within 30 days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 1 per centum a month from the date of such notice and demand until it is paid.

SEC. 313. (a) The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, * * *

ART. 35. Appeals and hearings.—An appeal may be taken by any donor, his executor, or the administrator of his estate, to the Board of Tax Appeals from any final determination by the commissioner that there is a deficiency in respect of the gift tax, provided the time within which an assessment may be made has not expired. Where, however, a jeopardy assessment is made, no appeal can be taken to the board until after a claim for abatement has been filed and acted upon by the commissioner. (See art. 53.)

In every case where a deficiency appears to exist, unless the right to make assessment thereof has expired, the donor will be advised by letter of the bureau's tentative findings. In the event the donor objects to the tentative findings, in whole or in part, he may file (by letter or other informal writing) a protest with the commissioner within 30 days from the mailing (not the receipt) of the letter advising him of such tentative findings, except that where the donor is a nonresident or a resident of Alaska or Hawaii, the period within which such protest may be presented shall be 60 days from the mailing of such letter. However, if the protest is mailed in time to be received by the commissioner within such period in the ordinary course of the mails it will be accepted. The supporting evidence may be in the form of affidavits, or may consist of original documents, certified or verified copies thereof, or other competent evidence, and if no oral hearing is requested, must be filed prior to the expiration of 25 days after the time for the filing of the protest. Upon presentation of a protest, careful consideration will be given thereto before the tax liability is finally determined. An oral hearing is not a prerequisite to the consideration of a protest. If, however, a hearing in the bureau is desired, it must be requested

within the time allowed for the filing of a protest. If it is desired to have the hearing set for any particular date, the request should so state, and the date suggested will be confirmed by the bureau, if possible. If a hearing is requested, all data relied upon must be filed 5 days prior to the date to be fixed therefor. Should the donor not appear in person at the hearing his representative must present a properly executed power of attorney. All hearings relative to tentative findings will be held only in Washington, D. C.

Upon cause shown the donor may obtain a reasonable extension of time for holding such conference or filing such data. Any request for such additional time shall state specifically the reasons therefor. If, pursuant to the conference, the Miscellaneous Tax Unit and the donor reach an agreement respecting the amount of the deficiency, such amount will thereupon be assessed, and where, upon examination of the data submitted by the donor without conference, the Miscellaneous Tax Unit concedes that there is no deficiency, the donor will be so notified.

Where a protest is filed, it should contain (a) the name of the donor; (b) a reference to the date and symbols appearing on the letter containing the tentative findings; (c) an itemized schedule of the findings of the unit to which the donor takes exception; (d) a summary statement of the grounds upon which the donor relies in connection with each exception; and (e) in case the donor desires a hearing, a statement to that effect.

Any questions in respect to which the Miscellaneous Tax Unit and the donor are unable to agree, other than questions of valuation of property or questions of fact arising in connection with any deduction claimed by the donor, will be submitted to the Solicitor of Internal Revenue for consideration, and the donor will be notified by the Miscellaneous Tax Unit of the submission and of the questions submitted. Opportunity for a hearing before the Solicitor of Internal Revenue, or before such representative of his office as he may designate, will be granted if request therefor is made to the solicitor within 20 days after the mailing of the letter to the donor advising of the submission of the questions to the solicitor. Where, however, the donor is a nonresident or a resident of Alaska or Hawaii, the solicitor will grant a hearing if request therefor is made to him within 60 days from the mailing of such letter. The solicitor, after consideration of the case, will submit his recommendations to the commissioner. The donor will in all cases be notified by registered mail of the commissioner's final determination. If the donor presents no protest within 30 days or 60 days, as the case may be, from the date of the letter advising of the tentative findings, final determination will be made and the donor notified thereof by registered mail.

Within 60 days after the mailing of the registered letter advising of the final determination by the commissioner, the donor may file an appeal with the Board of Tax Appeals.

Where in any case the donor acquiesces in the tentative or final determination of the deficiency, or any part thereof, the form of agreement consenting to assessment, which will be forwarded with the letter of notification, should be executed by the donor and returned to the commissioner in order to expedite assessment which stops the accrual of interest until after notice and demand by the collector.

If the commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, such deficiency will be assessed and notice and demand made by the collector for the payment thereof. In such case the assessment may be made (1) without giving the notice provided in subdivision (a) of section 308, or (2) before the expiration of the 60-day period provided in subdivision (a) of section 308, even though such notice has been given, or (3) at any time prior to the final decision by the Board of Tax Appeals, even though the donor has filed an appeal. If a deficiency is assessed under subdivision (d) of section 308, the donor, within 30 days after notice and demand from the collector for the payment thereof, may file a claim for the abatement of such deficiency or any part thereof. (See arts. 53 to 55.)

Where an abatement claim is filed it will be considered in accordance with the procedure hereinbefore specified in connection with protests filed in respect of tentative findings of which the donor is advised prior to assessment.

Where the time within which an assessment may be made has expired, no tentative findings will be sent to the donor, though he will be duly advised of the tax liability as determined by the commissioner, and suit for the collection thereof will be instituted unless it is paid promptly. Where a deficiency is determined after the time within which an assessment may be made, no appeal may be taken to the Board of Tax Appeals.

ASSESSMENT OF TAX

ART. 36. Jeopardy and other assessments.—In any case where the commissioner believes that the assessment or collection of a deficiency tax would be jeopardized by delay, he will make an immediate assessment thereof. In such case the assessment may be made (1) without giving any notice thereof, or (2) before the expiration of the 60-day period provided by subdivision (a) of section 308, even though such 60-day notice has been given, or (3) at any time prior to the final decision by the Board of Tax Appeals, if an appeal has been filed. (See art. 35.)

All assessments, except in the case of a false or fraudulent return, or of a failure to file a return, must be made within four years after the return was filed, unless, however, (1) an appeal is filed with the Board of Tax Appeals from the determination by the commissioner of a deficiency, in which case the period of four years within which assessment thereof is required to be made shall be extended by the number of days between the date of the mailing of the 60-day notice and the final decision by the Board of Tax Appeals; or (2) no appeal is filed, in which case the period of four years within which assessment thereof is required to be made shall be extended 60 days.

In case of a false or fraudulent return with intent to evade the tax, or of a failure to file a return, the tax may be assessed, or proceedings in court for collection may be begun without assessment, at any time.

ART. 37. Payment of tax; general.—The tax must be paid on or before the 15th day of March of the year succeeding the calendar year in which the gifts were made, unless an extension of time for payment thereof has been granted by the commissioner. No discount will be allowed for payment in advance of the due date. The collector will grant to the person paying the tax duplicate receipts, either of which will be sufficient evidence of such payment.

Following an investigation of the return, the tax liability will be finally determined by the commissioner upon the basis of such investigation. If the amount of tax shown on the return has been paid and exceeds the amount of tax as finally determined, the commissioner will refund such excess. If the amount of tax as finally determined exceeds the amount of tax already paid, the commissioner will notify the donor of the amount of the deficiency tax, and payment thereof, in whole or in part, may then be made to the collector. Where the audit of the return does not disclose a deficiency tax, the donor will be notified to that effect.

PAYMENT OF AND RECEIPTS FOR TAXES

SEC. 1021. (a) Collectors may receive, * * * uncertified checks in payment of income, war-profits and excess-profits taxes and any other taxes payable other than by stamp, during such time and under such rules and regulations as the commissioner, with the approval of the Secretary, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions to the same extent as if such check had not been tendered.

ART. 38. Payment by check.—Collectors may accept uncertified checks in payment of gift taxes, provided such checks are collectible at par, that is, for the full amount, without any deduction for ex-

change or other charges. The collector will stamp upon the face of each check before deposit thereof the words "This check is in payment of an obligation to the United States and must be paid at par. No protest." This should be followed by his name and title. The day on which the check is received will be considered the date of payment so far as the taxpayer is concerned, unless the check is returned dishonored. If the bank on which a check is drawn should refuse to pay it at par, the check should be returned through the depository bank.

All expenses incident to the attempt to collect such a check and the return of it through the depository bank must be paid by the drawer of the check to the bank on which it is drawn. (See sec. 3210 of the Revised Statutes, as amended by sec. 1031 (b) of the revenue act of 1924.) Where a check has been returned uncollected by the depository bank, the collector should proceed to collect the tax as though no check had been given, and the taxpayer will remain liable for payment of the tax and for all legal penalties and additions to the same extent as though such check had not been tendered. A taxpayer who tenders a certified check in payment of taxes is not released from his obligation until the check has been paid. (See ch. 191 of the act of March 2, 1911.)

Treasury Department Circular No. 176, as amended, prescribes detailed regulations governing the deposit and collection of checks. Collectors are referred to paragraphs 13-16 and paragraph 26 thereof as to the deposit of taxpayers' checks and the handling of uncollected or lost items.

ART. 39. Donor liable for tax.—The statute provides that the donor shall pay the tax. Where the donor dies before the tax is paid, his executor or administrator shall make payment thereof to the collector. Where there is no duly qualified executor or administrator, all persons in actual or constructive possession of any property of the donor are liable for and required to pay the tax to the extent of the value of such property. As to the liability of the donee, see article 45, and as to that of the executor, see article 59.

ART. 40. Extension of time for payment of tax shown on return.—In any case where the commissioner finds that payment of the tax on the due date would impose undue hardship upon the donor, or upon his estate if he be dead, an extension or extensions of time will be granted for the payment of the tax for a period not to exceed in all five years from the due date. Extensions of time for tax payment will be granted only in exceptional cases, and where it is evident that the payment of the tax on or before the due date would impose upon the donor, or his estate, undue hardship. The term "undue hardship" means more than an inconvenience. It must appear that

substantial financial loss or sacrifice would result from making payment of the tax at the due date.

An application for an extension of time for the payment of the tax must be made under oath, and must contain sufficient information from which the commissioner may determine whether undue hardship would result if the requested extension were refused. The extension will not be granted on a general statement of hardship, but in each case there must be furnished a statement of the specific facts showing what, if any, financial loss or sacrifice would result if no extension were granted.

As a condition to the granting of such extension, the commissioner may require that a penal bond be furnished in an amount not exceeding double the amount of the tax. If a bond is required it must be filed with the collector within ten days after notification by the commissioner that such bond is required, and shall be conditioned upon the payment of the tax in accordance with the terms of the extension granted, including interest and any additional amount that may be assessed, and shall be executed by a surety or sureties and subject to the approval of the commissioner. In lieu of such surety or sureties, the bond may be secured by deposit of Liberty bonds or other bonds or notes of the United States in a sum equal at their par value to the amount of such bond. The first extension granted will be for a period of not less than six months from the due date of the tax, and no single extension for more than one year will be granted. Application for extension of time for payment should be filed with the collector, who will refer it to the commissioner with suitable recommendations.

An extension of time to pay the tax does not relieve from the duty of filing the return on or before the date fixed by the statute, nor will it operate to prevent the running of interest. (See arts. 34, 41 and 43.)

Where the donor, his executor, or the administrator of his estate, desires to obtain an additional extension, the application therefor must be filed with the collector on or before the date of the expiration of the previous extension; otherwise the application must be denied.

The granting of an extension of time for paying the tax is discretionary with the commissioner and such authority will be exercised under such conditions as he may deem advisable. (See arts. 34 and 42.)

ART. 41. Interest on tax disclosed on return.—Where any portion of the tax indicated by the return is not paid on or before the due date, and no extension of time for payment thereof has been granted, such

unpaid portion bears interest at the rate of 1 per centum a month from the due date until payment is received by the collector.

Where, however, an extension of time has been granted for paying any portion of the tax shown upon the return, the statute requires the imposition of interest upon the amount, the time for payment of which has been extended, at the rate of 6 per centum per annum from the expiration of six months after the due date of the tax (the 15th day of March) to the expiration of the period of the extension. If the amount of tax, the time for payment of which has been extended, and the interest thereon from six months after the due date of the tax, are not paid in full prior to the expiration of the extension, or extensions, granted by the commissioner, interest accrues upon the total amount (tax and interest), at the rate of 1 per centum a month from the date of the expiration of the extension, or extensions, until payment is received by the collector.

In any case where an extension of time is granted for paying the tax, interest will be added to the amount, the time for payment of which has been extended, from six months after the due date until the expiration of the period of extension, or extensions, even though payment may be made before the expiration thereof. (See arts. 34 and 40.)

ART. 42. Extension of time for payment of deficiency tax.—In any case where the commissioner finds that payment of the deficiency tax upon the date prescribed for the payment thereof would impose undue hardship upon the donor or his estate, if he be dead, an extension or extensions of time will be granted, with the approval of the Secretary, for payment for a period not to exceed in all two years from the date prescribed for the payment thereof.

The term "undue hardship" means more than an inconvenience. It must appear that substantial financial loss or sacrifice would result from making payment of the deficiency at the time prescribed for the payment thereof. No extension will be granted where the deficiency is due to negligence or intentional disregard of the rules and regulations or to fraud with intent to evade the tax.

Any application for an extension of time for the payment of a deficiency must be made under oath, and must be accompanied by evidence showing that undue hardship would result if the extension were refused. The extension will not be granted on a general statement of hardship, but in each case there must be furnished a statement of the specific facts showing what, if any, financial loss or sacrifice would result if no extension were granted.

As a condition to the granting of such an extension, the commissioner may require that a penal bond be furnished in an amount

not exceeding double the amount of the deficiency. If the bond is required, it must be filed with the collector within 10 days after notification by the commissioner that such bond is required, and shall be conditioned upon the payment of the deficiency in accordance with the terms of the extension granted, including interest and any additional amounts that may be assessed, and shall be executed by a surety or sureties and shall be subject to the approval of the commissioner. In lieu of such surety or sureties, the bond may be secured by deposit of Liberty bonds or other bonds or notes of the United States in a sum equal at their par value to the amount of such bond. No single extension for more than one year will be granted. Application for extension of time for payment should be filed with the collector. The collector will refer the application to the commissioner, with suitable recommendations.

An extension of time to pay the deficiency will not operate to prevent the running of interest. No extension of time for paying a deficiency will be granted until after the assessment thereof and notice and demand for payment has been made by the collector. Consequently no application for extension of time for payment of a deficiency, or any part thereof, should be made prior to the receipt of such notice and demand. (See arts. 34 and 43.)

ART. 43. Interest on deficiency tax.—The statute provides that the deficiency, except where a claim for abatement of any portion thereof is filed, shall bear interest at the rate of 6 per centum per annum from the due date for payment of the tax (the 15th day of March succeeding the calendar year in which the gifts were made) to the date the deficiency is assessed, and that such interest shall be assessed at the same time as the deficiency, of which it becomes an integral part.

Such portion of the deficiency, assessed as provided in the first paragraph of this article, not paid in full within 30 days from the date of notice and demand by the collector, bears interest at the rate of 1 per centum a month from the date of such notice and demand until payment is received by the collector, unless, however, an extension for the payment thereof has been granted. Where an extension of time for paying the deficiency, or any portion thereof, has been granted, the statute requires the imposition of interest upon the amount, the time for payment of which has been extended, at the rate of 6 per centum per annum for the period of the extension, and if not paid before the expiration of the extension, or extensions, interest accrues upon the total amount (tax, interest, or additions thereto) at the rate of 1 per centum a month from the date of the expiration of the extension until payment is received by the collector.

In any case where an extension of time is granted for paying the deficiency, interest will be added to the amount, the time for payment of which has been extended, for the period of the extension, or

extensions, even though payment may be made before the expiration thereof.

Example: A deficiency in the tax amounting to \$500 was determined and assessment thereof made on the 15th day of July of the year following the calendar year in which the gifts were made. The amount of the assessment in this instance is \$500, plus interest thereon at 6 per centum per annum from and including March 16 (the due date being March 15) to and including July 15, amounting to \$10.03, or a total assessment of \$510.03, which thereupon becomes the amount of the deficiency. The date of the notice and demand by the collector for payment was August 1 following the assessment. Within 30 days thereafter, \$255.02 was paid and request made for an extension of time for paying the balance of the deficiency (\$255.01), and an extension of six months from August 1 to February 1 was granted for the payment thereof. This amount bears interest at 6 per centum per annum for the period of the extension, amounting to \$7.71. The remaining liability is, therefore, \$262.72 (though paid in full prior to the expiration of the extension). The amount of liability in this instance was not paid until August 2 following the expiration of the extension. Inasmuch as the \$255.01, the time for payment of which was extended, was not paid until after the expiration of the extension, interest accrued thereon at the rate of 1 per centum a month for six months, amounting to \$15.30. The amount due on August 2 was, therefore, \$278.02 ($\$255.01 + 7.71 + 15.30$).

Any addition to the tax resulting from the imposition of an ad valorem penalty under the provisions of section 3176, Revised Statutes, for delinquency in filing the return, is subject to the same provisions of law relating to the assessment, collection, and the accrual of interest, as the deficiency tax, except that such addition to the tax is not subject to any interest between the due date for payment of the tax (the 15th of March) and the date of the assessment thereof.

Where a claim is filed for the abatement of any deficiency tax, or any addition to the tax resulting from the imposition of an ad valorem penalty, interest accrues on such portion of the deficiency, or penalty, if any, as is not abated, at the rate of 6 per centum per annum from the date of the notice and demand by the collector following the jeopardy assessment to the date of the notice and demand by the collector subsequent to the action taken on the claim by the commissioner or by the Board of Tax Appeals, if an appeal is filed. If the amount, the claim for abatement of which is denied, is not paid in full within 30 days after such notice and demand subsequent to the action on the claim for abatement, interest accrues upon the un-

paid amount at the rate of 1 per centum a month from the date of such notice and demand until it is paid.

COLLECTION OF TAX

SEC. 324. The tax imposed by section 319 shall be paid by the donor on or before the 15th day of March, and shall be assessed, collected, and paid in the same manner and subject, in so far as applicable, to the same provisions of law as the tax imposed by section 301.

SEC. 314. (a) If the tax herein imposed is not paid on or before the due date thereof the collector shall, upon instruction from the commissioner, proceed to collect the tax under the provisions of general law, or commence appropriate proceedings in any court of the United States having jurisdiction, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto.

ART. 44. **Remedy not exclusive.**—The remedy by action, here provided, is not exclusive. For other available remedies for the collection of the tax, see article 62.

LIEN

SEC. 324. The tax imposed by section 319 shall be paid by the donor on or before the 15th day of March, and shall be assessed, collected, and paid in the same manner and subject, in so far as applicable, to the same provisions of law as the tax imposed by section 301.

SEC. 315. (a) Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

(b) If (1) the decedent makes a transfer of, or creates a trust with respect to, any property in contemplation of or intended to take effect in possession or enjoyment at or after his death. (except in the case of a bona fide sale for a fair consideration in money or money's worth) or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for a fair consideration in

money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for a fair consideration in money or money's worth.

ART. 45. Property subject to lien.—This lien attaches to all the property of the donor, to the extent of the tax shown to be due by the return and of any deficiency tax, interest, and ad valorem penalty found to be due upon audit and review of the return. The lien also attaches to any property constituting the gift.

Where the donor transferred or placed in trust any property by gift, a lien attaches thereto as stated in the preceding paragraph, and the donee or trustee is personally liable for the tax.

Where the donee or trustee sells the property to a bona fide purchaser for a fair consideration in money or money's worth, the lien upon the property is divested, but there is substituted a like lien upon all the property of the donee or trustee, except such thereof as may be sold to a bona fide purchaser for a fair consideration in money or money's worth.

The lien upon the entire property constituting gifts or upon the property of the donor continues for a period of 10 years after the gift, or gifts, except—

(1) Where the tax is paid in full before the expiration of such period;

(2) In case of the donor's death, such portion of his estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof;

(3) Such of the property constituting the gift as has been sold by the donee or trustee to a bona fide purchaser for a fair consideration in money or money's worth; or

(4) Where the commissioner issues his certificate releasing such lien. (See art. 46.)

ART. 46. Release of lien.—The statute provides that, if the commissioner is satisfied that the tax liability has been fully discharged or provided for, he may issue his certificate releasing from the lien any or all property impressed therewith. The issuance of certificates is a matter resting within the discretion of the commissioner, and certificates will be issued only in case there is actual need therefor.

The tax will be considered fully discharged for the purpose of the issuance of a certificate only when investigation has been completed, and payment of the tax, as determined by the commissioner, has been made. In such case a certificate of release of lien may be issued by the commissioner as to any or all property constituting the gifts or property of the donor upon the filing of an application

in duplicate on Form 791A. The form must contain all the information called for.

Where the tax liability has not been fully discharged, no general certificate of release will be granted, but releases of lien upon particular items of property will be issued upon the filing with the commissioner of such security, if any, as he may require. Where security is required, a penal bond must be furnished, in such amount as the commissioner may designate and secured as provided in the third paragraph of article 40. In lieu of such security, the commissioner may in any case issue a release upon payment of the estimated maximum amount of tax. If, upon consideration of the application, the commissioner finds the issuance of the certificate warranted, it will be issued and forwarded to the collector who will make delivery thereof to the applicant when the conditions upon which delivery is to be made are met. (See art. 45.)

PENALTIES

SEC. 324. The tax imposed by section 319 shall be paid by the donor on or before the 15th day of March, and shall be assessed, collected, and paid in the same manner and subject, in so far as applicable, to the same provisions of law as the tax imposed by section 301.

SEC. 1017. (a) Any person required under this act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this act, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Any person required under this act to collect, account for and pay over any tax imposed by this act, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) Any person who willfully (1) aids or assists in the preparation or presentation of a false or fraudulent return, affidavit, claim, or document, authorized or required by the internal revenue laws, or (2) procures, counsels, or advises the preparation or presentation of such return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * * * *

(e) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

SEC. 317. (a) Whoever knowingly makes any false statement in any notice or return required to be filed under Part I of this title shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both.

(b) Whoever fails to comply with any duty imposed upon him by section 304, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the commissioner or any collector or law officer of the United States or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under Part I of this title, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

SEC. 1003. Section 3176 of the Revised Statutes, as amended, is amended to read as follows:

"SEC. 3176. * * * In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the commissioner shall add to the tax 50 per centum of its amount.

"The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax."

ART. 47. Nature of penalties.—Two kinds of penalties are provided for delinquency with respect to the duties imposed by the statute:

- (1) A specific penalty, to be recovered by suit, unless previously paid or adjusted by an acceptance of an offer in compromise; and
- (2) A penalty of a certain percentage of the tax, to be added to and collected in the same manner as the tax.

In any case where more than one penalty is provided, the Government may assert any one or more thereof.

ART. 48. Penalties for false or fraudulent return.—Where any statement in the return is knowingly false, the person making it is subject to a penalty not exceeding \$5,000, or imprisonment for not exceeding one year, or both, and 50 per centum will be added to the amount of the tax. Any person required to make a return who willfully fails to do so at the time required shall be guilty of a

misdeemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

Any person who willfully aids or assists in the preparation or presentation of a false or fraudulent return, or procures, counsels, or advises the preparation or presentation of such a return, whether such falsity or fraud is with or without the knowledge or consent of the person required to make the return, will be guilty of a felony and, upon conviction thereof, fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution. (See art. 34.)

ART. 49. Penalty for failure to file return.—For failure to file the return within the time prescribed, 25 per centum will be added to the amount of the tax, except that when a return is filed after such time and it is shown that the failure so to file was due to a reasonable cause and not to willful neglect no such addition will be made to the tax.

The ad valorem penalty of 25 per centum of the tax will not be imposed where an extension of time for filing the return was granted by the collector pursuant to the provisions of article 24, and the return is actually filed within the period of extension granted.

ART. 50. Penalty for failure to pay tax, exhibit property, keep or exhibit records, etc.—Any person in possession or control of any record, file, or paper, containing or supposed to contain information relating to any gift made by the donor, or having in his possession or control property which was the subject of the gift, who fails to exhibit the same upon the request of the commissioner or any collector or law officer of the United States, or his duly authorized deputy or agent, in the performance of his duties, is liable to a penalty not to exceed \$500, to be recovered by civil action. Such a request must be granted whether or not he believes that a compliance therewith is material.

Any person required to pay the tax, keep any records, or supply any information, for the purpose of the computation, assessment, or collection of the tax, who willfully fails to pay such tax, keep such records, or supply such information, as required by the law or regulations, shall, in addition to other penalties, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned not more than one year, or both, together with the costs of prosecution.

Any person who willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

ART. 51. Penalty for assisting, procuring, or advising the preparation or presentation of false or fraudulent documents.—Any person who willfully (1) aids or assists in the preparation or presentation of a false or fraudulent affidavit, claim, or document, or (2) procures, counsels, or advises the preparation or presentation of such affidavit, claim, or document, shall, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such affidavit, claim, or document, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

CLAIMS FOR ABATEMENT AND REFUND

SEC. 324. The tax imposed by section 319 shall be paid by the donor on or before the 15th day of March, and shall be assessed, collected, and paid in the same manner and subject, in so far as applicable, to the same provisions of law as the tax imposed by section 301.

SEC. 1011. Section 3220 of the Revised Statutes, as amended, is reenacted without change, as follows:

“**SEC. 3220.** The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section.”

SEC. 1012. Section 3228 of the Revised Statutes, as amended, is amended to read as follows:

“**SEC. 3228.** (a) All claims for the refunding or crediting of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as provided in section 281 of the revenue act of 1924, be presented to the Commissioner of Internal Revenue within four years next after the payment of such tax, penalty, or sum.

“(b) Except as provided in section 281 of the revenue act of 1924, claims for credit or refund (other than claims in respect of taxes imposed by the revenue act of 1916, the revenue act of 1917, or the revenue act of 1918) which at the time of the enactment of the revenue act of 1921 were barred from allowance by the period of limitation then in existence, shall not be allowed.”

ART. 52. Kinds of relief after assessment or payment.—Two forms of relief are afforded the donor, or his personal representative, in case

he believes that an excessive amount of tax, interest or additional amounts, or an illegal penalty, has been assessed as a deficiency, or paid either upon the basis of the return or as a result of the audit of the return by the bureau. The two forms of relief are (1) claim for abatement, and (2) claim for refund. (See arts. 53 to 56.)

ART. 53. Claim for abatement.—A claim may be filed for the abatement of any part, or all, of a jeopardy assessment of a deficiency (including any interest, additional amounts, or ad valorem penalty, assessed in connection therewith), where the alleged excessive deficiency has been assessed but not paid. No claim may be filed by a taxpayer for the abatement of any part of the tax shown upon the return, or for the abatement of any deficiency tax, interest, additional amounts, or alleged ad valorem penalty, unless a jeopardy assessment thereof has been made.

Claims for abatement must be made under oath upon form 843. In addition to the claim, there should be submitted supporting evidence. Such evidence may be in the form of affidavits, or consist of attested records, or other authentic data. There may also be submitted written argument upon the evidence presented and the exceptions taken. When a tax or penalty has been assessed, the presumption is that the assessment is correct; and the burden of showing that it was improperly or illegally assessed rests upon the applicant for abatement. A full and explicit statement of all the material facts relating to the claim, in support of which it is offered, should be presented in order that it may receive proper consideration. Nothing should be left to inference, but all the facts relied upon should appear in the papers themselves.

Where a claim is filed for the abatement of any part, or all, of a jeopardy assessment, it shall be accompanied by a bond in such amount, not exceeding double the amount of the claim, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount of the claim as is not abated, together with interest thereon as provided in the statute. (See art. 43.) In lieu of such sureties, there may be deposited Liberty bonds or other bonds or notes of the United States in a sum equal at their par value to the amount of such bond. Upon filing of such claim and bond, the collection of so much of the amount assessed, as is covered by such claim and bond, shall be stayed pending the final disposition of the claim.

ART. 54. Accrual of interest as affected by abatement claim.—For rules relating to the application of interest where claims for abatement are filed, see article 43.

ART. 55. Limitation of time to file claim for abatement.—If it is desired to file a claim for abatement, such claim must be filed with the collector within 30 days after notice and demand by the collector

for payment of the tax. After that period the claim will not be considered, but the tax must be paid, and adjustment sought by claim for refund.

ART. 56. Claim for refund.—A claim may be filed for refund of any tax, interest, or penalty, alleged to be excessive or illegal, where the payment thereof has been made either upon the basis of the return or as a result of the audit and review thereof. Claims for refund must be presented to the commissioner within four years next after payment of the amount sought to be refunded. Such claim must be made on Form 843. As in the case of a claim for abatement, the burden of proof rests upon the claimant. All the facts relied upon in support of the claim should be clearly set forth under oath. The requirements of the remainder of this article should be complied with wherever applicable.

(1) Where a claim is filed after the death of the donor, and the administration of his estate has been closed, and the claim is signed by one only, or by less than all, of a number of beneficiaries entitled to share in the refund, or is signed by a person acting as attorney or agent for the interested parties, there must accompany the claim, in addition to the proof required in paragraph (3), *infra*, a power of attorney duly executed by all beneficiaries entitled to any portion of the repayment, authorizing the claimant or claimants to present the matter before the bureau. Under the law warrants in payment of claims can only be drawn payable to the party, or parties, entitled to the proceeds, and consequently can not be drawn payable to attorneys in fact or agents.

(2) Where the claim is made by an executor or administrator, a certificate of the court must be furnished showing that the appointment remains in full force and effect.

(3) Where the executor or administrator has been discharged and no administrator de bonis non has been appointed and qualified, there should be submitted, in lieu of the certificate above mentioned, (a) a certified copy of the court order granting the discharge, and (b) a certified copy of the order of distribution, or, if such order does not fully disclose the identity of the person or persons entitled to receive any amount that may be refunded and the percentage or proportion thereof to which each, if more than one, is entitled, there should be submitted a certified copy of the decedent's will, if any, and such further proof as may be requisite to establish both the identity of such person or persons and the percentage or proportion of the amount sought to be refunded to which each, where there are more than one, is entitled.

ART. 57. Payment of claims and interest.—Warrants in payment of claims allowed will be drawn to the order of the person or persons entitled to the proceeds, and will be forwarded directly to such per-

son or persons, except where delivery to an attorney or agent has been authorized in accordance with the regulations contained in Treasury Department Circular No. 230, dated August 15, 1923, as heretofore or hereafter amended or supplemented. If the claimants are indebted to the United States for taxes, such taxes must be paid before the warrants are delivered. (Act of March 3, 1875 (18 Stats. 481).)

Upon the allowance of a claim for refund of any tax or penalty paid, the statute provides for the payment of interest upon the total amount of such refund at the rate of 6 per centum per annum from the date such tax or penalty was paid to the date of the allowance of the refund.

POWER TO COMPROMISE OR REMIT PENALTIES

Revised Statutes, Sec. 3229 (Comp. Sts., 1916, Sec. 5952). The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal-revenue laws instead of commencing suit thereon; and, with the advice and consent of the said Secretary and the recommendation of the Attorney-General, he may compromise any such case after a suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of the commissioner the opinion of the Solicitor of Internal Revenue, or of the officer acting as such, with his reasons therefor, with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise.

ART. 58. Power to compromise or remit.—The commissioner, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws instead of commencing suit thereon, and with the advice and consent of the Secretary, and upon the recommendation of the Attorney-General, may compromise any such case after suit thereon has been commenced by the United States. Accordingly, the power to compromise extends to (a) both civil and criminal cases; (b) cases whether before or after suit; and (c) both taxes and penalties, except that taxes legally due from a solvent taxpayer may not be compromised. Refunds can not be made of accepted offers in compromise in cases where it is subsequently ascertained that no violation of law was involved.

PERSONAL LIABILITY OF EXECUTOR OF DONOR'S ESTATE

Revised Statutes, Sec. 3467 (Comp. Sts., 1916, Sec. 6373). Every executor, administrator, or assignee, or other person, who pays any debts due by the person or estate from [for] whom or for which he acts, before he satisfies and pays the debts due to the United States

from such person or estate, shall become answerable in his own person, and estate for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

ART. 59. Extent of liability.—Where the donor dies before the tax is paid his executor or the administrator of his estate is personally liable for the payment of the tax if he pays any debts of the donor before he pays the tax.

EXAMINATION OF RECORDS AND TAKING OF TESTIMONY

SEC. 1004. The commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

SEC. 1025. (a) If any person is summoned under this act to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(b) The district courts of the United States at the instance of the United States are hereby invested with such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the provisions of this act. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such provisions.

(c) The paragraph added by section 1310 of the revenue act of 1921 at the end of paragraph Twentieth of section 24 of the Judicial Code, relating to the jurisdiction of district courts, is reenacted without change, as follows:

“Concurrent with the Court of Claims, of any suit or proceeding, commenced after the passage of the revenue act of 1921, for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected, under the internal-revenue laws, even if the claim exceeds \$10,000, if the collector of internal-revenue by whom such tax, penalty, or sum was collected is dead at the time such suit or proceeding is commenced.”

ART. 60. Securing evidence—Taking testimony.—In order to ascertain the correctness of a return, or to make a return where none has

been made, the commissioner has power to require the attendance, and to take the testimony, of the person rendering the return, or any officer or employee of such person, or any other person having knowledge in the premises. Such persons may be required to produce any relevant book, paper, or other record. This power may be exercised by any revenue agent or inspector designated for the purpose.

ART. 61. Power to compel compliance.—Where any person is summoned to appear and testify, or to produce books, papers, or other data, the District Court of the United States for the district in which such person resides has power to compel the giving of the testimony, or the production of the books, papers, or data, and to issue any appropriate process, writ, or order.

REMEDIES FOR COLLECTION

SEC. 1000. All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this act.

SEC. 311. * * *

(b) Where the assessment of the tax is made within the period prescribed in section 310 or in this section, such tax may be collected by distraint or by a proceeding in court, begun within six years after the assessment of the tax. Nothing in this act shall be construed as preventing the beginning, without assessment, of a proceeding in court for the collection of the tax at any time before the expiration of the period within which an assessment may be made.

ART. 62. Remedies for collection of tax.—The provisions of the statute quoted above apply to the gift tax, and three remedies are thus provided for the collection thereof:

(1) *Collection by distraint.*—The collector may issue warrant of distraint authorizing the seizure and sale of any or all of the assets of the donor or his estate. (See R. S., secs. 3187 et seq., as amended by sec. 1016 of the revenue act of 1924.)

(2) *Collection by suit to subject the property to sale.*—The collector may commence in any court of the United States appropriate proceedings, in the name of the United States, to subject the property of the donor or his estate to sale under the judgment or decree of the court.

(3) *Collection by suit for personal liability.*—Where the donor dies before the tax is paid, the personal liability of his executor or the administrator of his estate, or of the donee or trustee of the transferred property may be enforced by any appropriate action.

RECORDS, STATEMENTS, AND SPECIAL RETURNS

SEC. 1002. (a) Every person liable to any tax imposed by this act, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such

rules and regulations, as the commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) Whenever in the judgment of the commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as the commissioner deems sufficient to show whether or not such person is liable to tax.

* * * * *

(d) Any oath or affirmation required by the provisions of this act or regulations made under authority thereof, may be administered by any officer authorized to administer oaths for general purposes by the law of the United States or of any State, Territory, or possession of the United States, wherein such oath or affirmation is administered, or by any consular officer of the United States.

ART. 63. Donor's duty to keep records.—It is the duty of the donor to keep such records as the commissioner may require. The donor is required to keep such complete and detailed records relating to any gifts made by him as will enable the commissioner to determine accurately the amount of the tax liability.

ART. 64. Donor's duty to render statements.—It is the duty of the donor, or his executor, or the administrator of his estate, not only to make the formal return, but also to render any other sworn statement which the commissioner may require for the purpose of determining whether a tax liability exists and, if so, the extent thereof.

SEC. 1001. The commissioner, with the approval of the Secretary, is authorized to prescribe all needful rules and regulations for the enforcement of this act.

ART. 65. Promulgation of regulations.—In pursuance of the statute, the foregoing regulations are hereby made and promulgated.

D. H. BLAIR,

Commissioner of Internal Revenue.

Approved November 8, 1924.

A. W. MELLON,

Secretary of the Treasury.

APPENDIX

REVENUE ACT OF 1924

PART II, TITLE III.—GIFT TAX

SEC. 319. For the calendar year 1924 and each calendar year thereafter, a tax equal to the sum of the following is hereby imposed upon the transfer by a resident by gift during such calendar year of any property wherever situated, whether made directly or indirectly, and upon the transfer by a nonresident by gift during such calendar year of any property situated within the United States, whether made directly or indirectly:

- 1 per centum of the amount of the taxable gifts not in excess of \$50,000;
- 2 per centum of the amount by which the taxable gifts exceed \$50,000 and do not exceed \$100,000;
- 3 per centum of the amount by which the taxable gifts exceed \$100,000 and do not exceed \$150,000;
- 4 per centum of the amount by which the taxable gifts exceed \$150,000 and do not exceed \$250,000;
- 6 per centum of the amount by which the taxable gifts exceed \$250,000 and do not exceed \$450,000;
- 9 per centum of the amount by which the taxable gifts exceed \$450,000 and do not exceed \$750,000;
- 12 per centum of the amount by which the taxable gifts exceed \$750,000 and do not exceed \$1,000,000;
- 15 per centum of the amount by which the taxable gifts exceed \$1,000,000 and do not exceed \$1,500,000;
- 18 per centum of the amount by which the taxable gifts exceed \$1,500,000 and do not exceed \$2,000,000;
- 21 per centum of the amount by which the taxable gifts exceed \$2,000,000 and do not exceed \$3,000,000;
- 24 per centum of the amount by which the taxable gifts exceed \$3,000,000 and do not exceed \$4,000,000;
- 27 per centum of the amount by which the taxable gifts exceed \$4,000,000 and do not exceed \$5,000,000;
- 30 per centum of the amount by which the taxable gifts exceed \$5,000,000 and do not exceed \$8,000,000;
- 35 per centum of the amount by which the taxable gifts exceed \$8,000,000 and do not exceed \$10,000,000;
- 40 per centum of the amount by which the taxable gifts exceed \$10,000,000.

SEC. 320. If the gift is made in property, the fair market value thereof at the date of the gift shall be considered the amount of the gift. Where property is sold or exchanged for less than a fair consideration in money or money's worth, then the amount by which the fair market value of the property exceeded the consideration received shall, for the purpose of the tax imposed by section 319, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

Sec. 321. In computing the amount of the gifts subject to the tax imposed by section 319, there shall be allowed as deductions:

(a) In the case of a resident—

(1) An exemption of \$50,000;

(2) The amount of all gifts or contributions made within the calendar year to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or fraternal society, order, or association operating under the lodge system, but only if such gifts or contributions are to be used by such trustee or trustees or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, and the amount of all gifts or contributions made within the calendar year by such corporation, trustee, or fraternal society, order, or association for a religious, charitable, scientific, literary, or educational purpose, or for the prevention of cruelty to children or animals, and the amount of all gifts or contributions made within the calendar year to the special fund for vocational rehabilitation authorized by section 7 of the vocational rehabilitation act;

(3) Gifts the aggregate amount of which to any one person does not exceed \$500;

(4) An amount equal to the value of any property transferred by gift within the calendar year, which can be identified (A) as having been received by the donor within five years prior to the time of his making such gift, either from another person by gift or from a decedent by gift, bequest, devise, or inheritance, or (B) as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax or an estate tax under this or any prior act of Congress was paid by or on behalf of the donor or the estate of such decedent, as the case may be, and only in the amount of the value placed by the commissioner on such property in determining the value of the gift or the gross estate of such decedent, and only to the extent that the value of such property is included in the total amount of gifts made within the calendar year and not deducted under paragraph (2) or (3) of this subdivision.

(b) In the case of a nonresident—

(1) The amount of all gifts or contributions made within the calendar year to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or fraternal society, order, or association, operating under the lodge system, but only if such gifts or contributions are to be used within the United States by such trustee or trustees or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, and the amount of all gifts or contributions made within the calendar year by such corporation, trustee, or

fraternal society, order, or association for a religious, charitable, scientific, literary, or educational purpose, or for the prevention of cruelty to children or animals, and the amount of all gifts or contributions made within the calendar year to the special fund for vocational rehabilitation authorized by section 7 of the vocational rehabilitation act;

(2) Gifts the aggregate amount of which to any one person does not exceed \$500;

(3) An amount equal to the value of any property situated in the United States transferred by gift within the calendar year, which can be identified (A) as having been received by the donor within five years prior to the time of his making such gift, either from another person by gift or from a decedent by gift, bequest, devise, or inheritance, or (B) as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax or an estate tax under this or any prior act of Congress was paid by or on behalf of the donor or the estate of such decedent, as the case may be, and only in the amount of the value placed by the Commissioner on such property in determining the value of the gift or the gross estate of such decedent, and only to the extent that the value of such property is included within the total amount of gifts made within the calendar year of property situated in the United States and not deducted under paragraph (1) or (2) of this subdivision.

SEC. 322. In case a tax has been imposed under section 319 upon any gift, and thereafter upon the death of the donor the amount thereof is required by any provision of Part I of this title to be included in the gross estate of the decedent then there shall be credited against and applied in reduction of the estate tax, which would otherwise be chargeable against the estate of the decedent under the provisions of section 301, an amount equal to the tax paid with respect to such gift; and in the event the donor has in any year paid the tax imposed by section 319 with respect to a gift or gifts which upon the death of the donor must be included in his gross estate and a gift or gifts not required to be so included, then the amount of the tax which shall be deemed to have been paid with respect to the gift or gifts required to be so included shall be that proportion of the entire tax paid on account of all such gifts which the amount of the gift or gifts required to be so included bears to the total amount of gifts in that year.

SEC. 323. Any person who within the year 1924 or any calendar year thereafter makes any gift or gifts in excess of the deductions allowed by section 321 shall, on or before the 15th day of March, file with the collector a return under oath in duplicate, listing and setting forth therein all gifts and contributions made by him during such calendar year (other than the gifts specified in paragraph (3) of subdivision (a) and in paragraph (2) of subdivision (b) of section 321), and the fair market value thereof when made, and also all sales and exchanges of property owned by him made within such year for less than a fair consideration in money or money's worth, stating therein the fair market value of the property so sold or exchanged and that of the consideration received by him, both as of the date of such sale or exchange.

SEC. 324. The tax imposed by section 319 shall be paid by the donor on or before the 15th day of March, and shall be assessed, collected, and paid in the same manner and subject, in so far as applicable, to the same provisions of law as the tax imposed by section 301.

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U. S. TREASURY DEPARTMENT
BUREAU OF INTERNAL REVENUE

REGULATIONS 79

(1936 EDITION)

RELATING TO

GIFT TAX

UNDER THE

REVENUE ACT OF 1932

AS AMENDED AND SUPPLEMENTED
BY THE REVENUE ACTS OF
1934 AND 1935



UNITED STATES
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These regulations apply to gifts made by residents and nonresidents after June 6, 1932.

(11)

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REGULATIONS RELATING TO THE GIFT TAX UNDER TITLE III OF THE REVENUE ACT OF 1932, AS AMENDED AND SUPPLEMENTED BY THE REVENUE ACTS OF 1934 AND 1935

TITLE III—GIFT TAX

(Except as otherwise specified, all section references are to the Revenue Act of 1932)

SECTION 501. IMPOSITION OF TAX.

(a) For the calendar year 1932 and each calendar year thereafter a tax, computed as provided in section 502, shall be imposed upon the transfer during such calendar year by any individual, resident or non-resident, of property by gift.

(b) The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; but, in the case of a nonresident not a citizen of the United States, shall apply to a transfer only if the property is situated within the United States. The tax shall not apply to a transfer made on or before the date of the enactment of this Act.

(c) The tax shall not apply to a transfer of property in trust where the power to revest in the donor title to such property is vested in the donor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such property or the income therefrom, but the relinquishment or termination of such power (other than by the donor's death) shall be considered to be a transfer by the donor by gift of the property subject to such power, and any payment of the income therefrom to a beneficiary other than the donor shall be considered to be a transfer by the donor of such income by gift.

SEC. 511, REVENUE ACT OF 1934. GIFTS OF PROPERTY SUBJECT TO POWER.

Subsection (c) of section 501 of the Revenue Act of 1932 (relating to the inapplicability of gift tax in the case of the transfer of property in trust subject to the power of the donor to revest title in himself) is repealed.

ARTICLE 1. Imposition of tax.—The statute imposes no tax upon property, but subjects to tax transfers of property by gift. The tax is not limited in its imposition to transfers of property without a valuable consideration, which at common law are treated as gifts, but extends to sales and exchanges for less than an adequate and full consideration in money or money's worth. (See article 8.) The statute taxes all such transfers of property made during the calendar year 1932 (after June 6, 1932, the date of the enactment of the Revenue Act of 1932) and each calendar year thereafter (other than gifts specified in subsection (b) of section 504) to the extent that they

are donative in character and exceed the deductions authorized by section 505, as amended. The tax applies to all individuals, whether resident or nonresident of the United States, but, in the case of a nonresident alien, the tax applies only to transfers of property situated within the United States. For the definition of "resident" and "citizen," see article 4. With reference to the situs of property, see article 18.

ART. 2. Transfers reached.—The statute imposes a tax whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. Thus, for example, a taxable transfer may be effected by the declaration of a trust, the forgiving of a debt, the assignment of a judgment, the assignment of the benefits of a contract of insurance, or the transfer of cash, certificates of deposit, or Federal, State, or municipal bonds. Various statutory provisions, which exempt bonds, notes, bills and certificates of indebtedness of the Federal Government or its agencies and the interest thereon from taxation, are not applicable to the gift tax since this tax is an excise tax on the transfer, and is not a tax on the subject of the gift. A gift of a bond, note, or certificate of indebtedness issued by the Federal Government, if made by a nonresident alien, not engaged in business in the United States, is not subject to the tax. Inasmuch as the tax also applies to gifts indirectly made, all transactions whereby property or property rights or interests are donatively passed or conferred upon another, regardless of the means or device employed, constitute gifts subject to tax. In the following examples of transactions resulting in taxable gifts, it will be understood that the transactions occurred after the date of the enactment of the statute (June 6, 1932), and were not for an adequate and full consideration in money or money's worth:

(1) Transfer of property by a corporation to B is a gift to the latter from the stockholders of the corporation. If B himself is a stockholder, the transfer, not being a distribution from earnings or in liquidation to which B is entitled as a stockholder, is a gift to him from the other stockholders.

(2) The transfer of property to B where there is imposed upon B the obligation of paying a commensurate annuity to C is a gift to C.

(3) The payment of money or the transfer of property to B in consideration whereof B is to render a service to C, is a gift to C, or both to B and C, depending on whether the service to be rendered by B to C is or is not an adequate and full consideration in money or money's worth for that which is received by B.

(4) If A creates a joint bank account for himself and B, there is a gift to B when B draws upon the account for his own benefit, to the extent of the amount drawn.

(5) If the insured assigns a life insurance policy, or designates a beneficiary in such a policy, but does not retain what amounts to a power of revocation (as, for example, the right to surrender or cancel the policy, the right to obtain a loan against the policy or its surrender value, or a right to change the beneficiary or assignee, if by the exercise of such latter right the proceeds of the policy might be made payable to the insured, his estate, or otherwise for his benefit), such assignment or designation constitutes a gift, even though the right of the assignee or beneficiary to receive the proceeds is conditioned upon his surviving the insured. For the valuation of policies of life insurance, see subdivision (9) of article 19.

(6) If there is an irrevocable gift of a policy of life insurance and the insured thereafter pays premiums thereon, each premium payment is a gift in the amount thereof.

(7) If a husband with his own funds purchases property and has the title thereto conveyed to himself and wife as tenants by the entirety, and under the law of the jurisdiction governing the rights of the tenants there is no right of severance by which either of the tenants, acting alone, can defeat the right of the survivor to the whole of the property, there is a gift to the wife in an amount to be determined by adding to the value of her right, if any, under the law of such jurisdiction to a share of the income or other enjoyment of the property during the joint lives of herself and husband, the value of her right to the whole of the property should she survive him, the value of each of such rights to be determined in accordance with the Actuaries' or Combined Experience Table of Mortality, as extended. (See article 19, subdivision (8).)

(8) If A with his own funds purchases property and has the title thereto conveyed to himself and B as joint tenants, with rights of survivorship, but which rights may be defeated by either party severing his interest, there is a gift to B in the amount of one-half the value of such property.

ART. 3. Cessation of donor's dominion and control.—The tax is not imposed upon the receipt of the property by the donee, nor is it necessarily determined by the measure of enrichment resulting to the donee from the transfer, nor is it conditioned upon ability to identify the donee at the time of the transfer. On the contrary, the tax is a primary and personal liability of the donor, is an excise upon his act of making the transfer, is measured by the value of the property passing from the donor, and attaches regardless of the fact that the identity of the donee may not then be known or ascertainable.

As to any property, or part thereof or interest therein, of which the donor has so parted with dominion and control as to leave in him no power to cause the beneficial title to be revested in himself, the gift is complete. But a transfer (in trust or otherwise), though

passing both legal and beneficial title, is still in essence merely formal so long as there remains in the donor a power to cause the revesting of the beneficial title in himself, and the gift, from the standpoint of substance, remains incomplete during the existence of the power. A donor shall be considered as having the power to revest in himself the beneficial title to the property transferred if he has such power in conjunction with any person not having a substantial adverse interest in the disposition of the property or the income therefrom. A trustee, as such, is not a person having a substantial adverse interest in the disposition of the trust property or the income therefrom. The relinquishment or termination of the power, occurring otherwise than by the death of the donor (the statute being confined to transfers by living donors), is regarded as the event which completes the gift and causes the tax to apply.¹ The receipt of income or of other enjoyment of the transferred property by the transferee or by the beneficiary (other than by the donor himself) during the interim between the making of the formal transfer and the relinquishment or termination of the power operates to free such income or other enjoyment from the donor's power to receive it himself, and constitutes a gift of such income or of such other enjoyment taxable in the calendar year of its receipt.

If the donor contends that a power retained by him constitutes beneficial dominion and control, and that by reason thereof the transfer is not in substance a gift, the transaction shall be disclosed in the return and evidence showing all relevant facts, including a copy of the instrument by which the transfer was made, should be submitted.

ART. 4. Citizenship and residence.—The statute imposes the tax upon the transfer of property by gift made by any individual, resident or nonresident, but provides that in the case of a nonresident not a citizen of the United States the tax shall apply to a transfer only if the property is situated within the United States. (See article 18.) If the donor is a citizen of the United States, whether a resident or a nonresident thereof, or is a resident of the United States, whether a citizen thereof or an alien, the tax applies, regardless of where the property, whether real or personal, is situated.

A person born or naturalized in the United States (including citizens and residents of possessions of the United States who have been made citizens of the United States by treaty or Act of Congress) who owes his allegiance to and is entitled to the protection of the United States is a citizen thereof. When any naturalized citizen has left the United States and resided for two years in the foreign country from which he

¹ So held in *Burnet v. Guggenheim* (288 U. S., 280, 53 S. Ct., 369) of a transfer in trust, made in 1917, with power in the donor to revoke, which power he relinquished in 1925, the relinquishment being treated a gift subject to the tax imposed by the gift tax title of the Revenue Act of 1924.

came or five years in any other foreign country, it is presumed that he has ceased to be a citizen of the United States. A person born in the United States of either citizen or alien parents and who resided in a foreign country for a number of years would still be a citizen of the United States unless he had become naturalized in or taken an oath of allegiance to the foreign country of residence or some other foreign state. A person who has filed his declaration of intention of becoming a citizen of the United States but who has not yet received his final citizenship papers is an alien.

A resident is one who has his domicile in the United States (including only the States, the Territories of Alaska and Hawaii, and the District of Columbia) at the time of the gift. (See section 1111 (a)(10).) All others are nonresidents. A person acquires a domicile in a place by living there for even a brief period of time with no definite present intention of moving therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile effect such change unless accompanied by an actual removal.

SEC. 502. COMPUTATION OF TAX.

The tax for each calendar year shall be an amount equal to the excess of—

(1) a tax, computed in accordance with the Rate Schedule hereinafter set forth, on the aggregate sum of the net gifts for such calendar year and for each of the preceding calendar years, over

(2) a tax, computed in accordance with the Rate Schedule, on the aggregate sum of the net gifts for each of the preceding calendar years.

GIFT TAX RATE SCHEDULE

Upon net gifts not in excess of \$10,000, three-fourths of 1 per centum.

\$75 upon net gifts of \$10,000; and upon net gifts in excess of \$10,000 and not in excess of \$20,000, 1½ per centum in addition of such excess.

\$225 upon net gifts of \$20,000; and upon net gifts in excess of \$20,000 and not in excess of \$30,000, 2¼ per centum in addition of such excess.

\$450 upon net gifts of \$30,000; and upon net gifts in excess of \$30,000 and not in excess of \$40,000, 3 per centum in addition of such excess.

\$750 upon net gifts of \$40,000; and upon net gifts in excess of \$40,000 and not in excess of \$50,000, 3¾ per centum in addition of such excess.

\$1,125 upon net gifts of \$50,000; and upon net gifts in excess of \$50,000 and not in excess of \$100,000, 5 per centum in addition of such excess.

\$3,625 upon net gifts of \$100,000; and upon net gifts in excess of \$100,000 and not in excess of \$200,000, 6½ per centum in addition of such excess.

\$10,125 upon net gifts of \$200,000; and upon net gifts in excess of \$200,000 and not in excess of \$400,000, 8 per centum in addition of such excess.

\$26,125 upon net gifts of \$400,000; and upon net gifts in excess of \$400,000 and not in excess of \$600,000, 9½ per centum in addition of such excess.

\$45,125 upon net gifts of \$600,000; and upon net gifts in excess of \$600,000 and not in excess of \$800,000, 11 per centum in addition of such excess.

\$67,125 upon net gifts of \$800,000; and upon net gifts in excess of \$800,000 and not in excess of \$1,000,000, 12½ per centum in addition of such excess.

\$92,125 upon net gifts of \$1,000,000; and upon net gifts in excess of \$1,000,000 and not in excess of \$1,500,000, 14 per centum in addition of such excess.

\$162,125 upon net gifts of \$1,500,000; and upon net gifts in excess of \$1,500,000 and not in excess of \$2,000,000, 15½ per centum in addition of such excess.

\$239,625 upon net gifts of \$2,000,000; and upon net gifts in excess of \$2,000,000 and not in excess of \$2,500,000, 17 per centum in addition of such excess.

\$324,625 upon net gifts of \$2,500,000; and upon net gifts in excess of \$2,500,000 and not in excess of \$3,000,000, 18½ per centum in addition of such excess.

\$417,125 upon net gifts of \$3,000,000; and upon net gifts in excess of \$3,000,000 and not in excess of \$3,500,000, 20 per centum in addition of such excess.

\$517,125 upon net gifts of \$3,500,000; and upon net gifts in excess of \$3,500,000 and not in excess of \$4,000,000, 21½ per centum in addition of such excess.

\$624,625 upon net gifts of \$4,000,000; and upon net gifts in excess of \$4,000,000 and not in excess of \$4,500,000, 23 per centum in addition of such excess.

\$739,625 upon net gifts of \$4,500,000; and upon net gifts in excess of \$4,500,000 and not in excess of \$5,000,000, 24½ per centum in addition of such excess.

\$862,125 upon net gifts of \$5,000,000; and upon net gifts in excess of \$5,000,000 and not in excess of \$6,000,000, 26 per centum in addition of such excess.

\$1,122,125 upon net gifts of \$6,000,000; and upon net gifts in excess of \$6,000,000 and not in excess of \$7,000,000, 27½ per centum in addition of such excess.

\$1,397,125 upon net gifts of \$7,000,000; and upon net gifts in excess of \$7,000,000 and not in excess of \$8,000,000, 29 per centum in addition of such excess.

\$1,687,125 upon net gifts of \$8,000,000; and upon net gifts in excess of \$8,000,000 and not in excess of \$9,000,000, 30½ per centum in addition of such excess.

\$1,992,125 upon net gifts of \$9,000,000; and upon net gifts in excess of \$9,000,000 and not in excess of \$10,000,000, 32 per centum in addition of such excess.

\$2,312,125 upon net gifts of \$10,000,000; and upon net gifts in excess of \$10,000,000, 33½ per centum in addition of such excess.

SEC. 520, REVENUE ACT OF 1934. GIFT TAX RATES.

(a) The gift-tax schedule set forth in section 502 of the Revenue Act of 1932 is amended to read as follows:

“Upon net gifts not in excess of \$10,000, three fourths of 1 per centum.

“\$75 upon net gifts of \$10,000; and upon net gifts in excess of \$10,000 and not in excess of \$20,000, 1½ per centum in addition of such excess.

“\$225 upon net gifts of \$20,000; and upon net gifts in excess of \$20,000 and not in excess of \$30,000, $2\frac{1}{4}$ per centum in addition of such excess.

“\$450 upon net gifts of \$30,000; and upon net gifts in excess of \$30,000 and not in excess of \$40,000, 3 per centum in addition of such excess.

“\$750 upon net gifts of \$40,000; and upon net gifts in excess of \$40,000 and not in excess of \$50,000, $3\frac{3}{4}$ per centum in addition of such excess.

“\$1,125 upon net gifts of \$50,000; and upon net gifts in excess of \$50,000 and not in excess of \$70,000, $5\frac{1}{4}$ per centum in addition of such excess.

“\$2,175 upon net gifts of \$70,000; and upon net gifts in excess of \$70,000 and not in excess of \$100,000, $6\frac{3}{4}$ per centum in addition of such excess.

“\$4,200 upon net gifts of \$100,000; and upon net gifts in excess of \$100,000 and not in excess of \$200,000, 9 per centum in addition of such excess.

“\$13,200 upon net gifts of \$200,000; and upon net gifts in excess of \$200,000 and not in excess of \$400,000, 12 per centum in addition of such excess.

“\$37,200 upon net gifts of \$400,000; and upon net gifts in excess of \$400,000 and not in excess of \$600,000, $14\frac{1}{4}$ per centum in addition of such excess.

“\$65,700 upon net gifts of \$600,000; and upon net gifts in excess of \$600,000 and not in excess of \$800,000, $16\frac{1}{2}$ per centum in addition of such excess.

“\$98,700 upon net gifts of \$800,000; and upon net gifts in excess of \$800,000 and not in excess of \$1,000,000, $18\frac{3}{4}$ per centum in addition of such excess.

“\$136,200 upon net gifts of \$1,000,000; and upon net gifts in excess of \$1,000,000 and not in excess of \$1,500,000, 21 per centum in addition of such excess.

“\$241,200 upon net gifts of \$1,500,000; and upon net gifts in excess of \$1,500,000 and not in excess of \$2,000,000, $23\frac{1}{4}$ per centum in addition of such excess.

“\$357,450 upon net gifts of \$2,000,000; and upon net gifts in excess of \$2,000,000 and not in excess of \$2,500,000, $25\frac{1}{2}$ per centum in addition of such excess.

“\$484,950 upon net gifts of \$2,500,000; and upon net gifts in excess of \$2,500,000 and not in excess of \$3,000,000, $27\frac{3}{4}$ per centum in addition of such excess.

“\$623,700 upon net gifts of \$3,000,000; and upon net gifts in excess of \$3,000,000 and not in excess of \$3,500,000, 30 per centum in addition of such excess.

“\$773,700 upon net gifts of \$3,500,000; and upon net gifts in excess of \$3,500,000 and not in excess of \$4,000,000, $32\frac{1}{4}$ per centum in addition of such excess.

“\$934,950 upon net gifts of \$4,000,000; and upon net gifts in excess of \$4,000,000 and not in excess of \$4,500,000, $34\frac{1}{2}$ per centum in addition of such excess.

“\$1,107,450 upon net gifts of \$4,500,000; and upon net gifts in excess of \$4,500,000 and not in excess of \$5,000,000, 36 per centum in addition of such excess.

"\$1,287,450 upon net gifts of \$5,000,000; and upon net gifts in excess of \$5,000,000 and not in excess of \$6,000,000, 37½ per centum in addition of such excess.

"\$1,662,450 upon net gifts of \$6,000,000; and upon net gifts in excess of \$6,000,000 and not in excess of \$7,000,000, 39 per centum in addition of such excess.

"\$2,052,450 upon net gifts of \$7,000,000; and upon net gifts in excess of \$7,000,000 and not in excess of \$8,000,000, 40½ per centum in addition of such excess.

"\$2,457,450 upon net gifts of \$8,000,000; and upon net gifts in excess of \$8,000,000 and not in excess of \$9,000,000, 42 per centum in addition of such excess.

"\$2,877,450 upon net gifts of \$9,000,000; and upon net gifts in excess of \$9,000,000 and not in excess of \$10,000,000, 43½ per centum in addition of such excess.

"\$3,312,450 upon net gifts of \$10,000,000; and upon net gifts in excess of \$10,000,000, 45 per centum in addition of such excess."

(b) The amendment made by subsection (a) of this section shall be applied in computing the tax for the calendar year 1935 and each calendar year thereafter (but not the tax for the calendar year 1934 or a previous calendar year), and such amendment shall be applied in all computations in respect of the calendar year 1934 and previous calendar years for the purpose of computing the tax for the calendar year 1935 or any calendar year thereafter.

SEC. 301, REVENUE ACT OF 1935. GIFT TAX RATES.

(a) The gift-tax schedule set forth in section 502 of the Revenue Act of 1932, as amended, is amended to read as follows:

"Upon net gifts not in excess of \$10,000, 1½ per centum.

"\$150 upon net gifts of \$10,000; and upon net gifts in excess of \$10,000 and not in excess of \$20,000, 3 per centum in addition of such excess.

"\$450 upon net gifts of \$20,000; and upon net gifts in excess of \$20,000 and not in excess of \$30,000, 4½ per centum in addition of such excess.

"\$900 upon net gifts of \$30,000; and upon net gifts in excess of \$30,000 and not in excess of \$40,000, 6 per centum in addition of such excess.

"\$1,500 upon net gifts of \$40,000; and upon net gifts in excess of \$40,000 and not in excess of \$50,000, 7½ per centum in addition of such excess.

"\$2,250 upon net gifts of \$50,000; and upon net gifts in excess of \$50,000 and not in excess of \$70,000, 9 per centum in addition of such excess.

"\$4,050 upon net gifts of \$70,000; and upon net gifts in excess of \$70,000 and not in excess of \$100,000, 10½ per centum in addition of such excess.

"\$7,200 upon net gifts of \$100,000; and upon net gifts in excess of \$100,000 and not in excess of \$200,000, 12¾ per centum in addition of such excess.

"\$19,950 upon net gifts of \$200,000; and upon net gifts in excess of \$200,000 and not in excess of \$400,000, 15 per centum in addition of such excess.

"\$49,950 upon net gifts of \$400,000; and upon net gifts in excess of \$400,000 and not in excess of \$600,000, 17¼ per centum in addition of such excess.

"\$84,450 upon net gifts of \$600,000; and upon net gifts in excess of \$600,000 and not in excess of \$800,000, 19½ per centum in addition of such excess.

"\$123,450 upon net gifts of \$800,000; and upon net gifts in excess of \$800,000 and not in excess of \$1,000,000, 21¼ per centum in addition of such excess.

"\$166,950 upon net gifts of \$1,000,000; and upon net gifts in excess of \$1,000,000 and not in excess of \$1,500,000, 24 per centum in addition of such excess.

"\$286,950 upon net gifts of \$1,500,000; and upon net gifts in excess of \$1,500,000 and not in excess of \$2,000,000, 26¼ per centum in addition of such excess.

"\$418,200 upon net gifts of \$2,000,000; and upon net gifts in excess of \$2,000,000 and not in excess of \$2,500,000, 28½ per centum in addition of such excess.

"\$560,700 upon net gifts of \$2,500,000; and upon net gifts in excess of \$2,500,000 and not in excess of \$3,000,000, 30¾ per centum in addition of such excess.

"\$714,450 upon net gifts of \$3,000,000; and upon net gifts in excess of \$3,000,000 and not in excess of \$3,500,000, 33 per centum in addition of such excess.

"\$879,450 upon net gifts of \$3,500,000; and upon net gifts in excess of \$3,500,000 and not in excess of \$4,000,000, 35¼ per centum in addition of such excess.

"\$1,055,700 upon net gifts of \$4,000,000; and upon net gifts in excess of \$4,000,000 and not in excess of \$4,500,000, 37½ per centum in addition of such excess.

"\$1,243,200 upon net gifts of \$4,500,000; and upon net gifts in excess of \$4,500,000 and not in excess of \$5,000,000, 39¾ per centum in addition of such excess.

"\$1,441,950 upon net gifts of \$5,000,000; and upon net gifts in excess of \$5,000,000 and not in excess of \$6,000,000, 42 per centum in addition of such excess.

"\$1,861,950 upon net gifts of \$6,000,000; and upon net gifts in excess of \$6,000,000 and not in excess of \$7,000,000, 44¼ per centum in addition of such excess.

"\$2,304,450 upon net gifts of \$7,000,000; and upon net gifts in excess of \$7,000,000 and not in excess of \$8,000,000, 45¾ per centum in addition of such excess.

"\$2,761,950 upon net gifts of \$8,000,000; and upon net gifts in excess of \$8,000,000 and not in excess of \$9,000,000, 47¼ per centum in addition of such excess.

"\$3,234,450 upon net gifts of \$9,000,000; and upon net gifts in excess of \$9,000,000 and not in excess of \$10,000,000, 48¾ per centum in addition of such excess.

"\$3,721,950 upon net gifts of \$10,000,000; and upon net gifts in excess of \$10,000,000 and not in excess of \$20,000,000, 50¼ per centum in addition of such excess.

"\$8,746,950 upon net gifts of \$20,000,000; and upon net gifts in excess of \$20,000,000 and not in excess of \$50,000,000, 51¼ per centum in addition of such excess.

"\$24,271,950 upon net gifts of \$50,000,000; and upon net gifts in excess of \$50,000,000, 52½ per centum in addition of such excess."

(b) Section 505 (a) (1) of the Revenue Act of 1932 (relating to the specific exemption for gift-tax purposes) is amended by striking out "\$50,000" and inserting in lieu thereof "\$40,000"

(c) The amendments made by subsections (a) and (b) of this section shall be applied in computing the tax for the calendar year 1936 and each calendar year thereafter (but not the tax for the calendar year 1935 or a previous calendar year), and such amendments shall be applied in all computations in respect of the calendar year 1935 and previous calendar years for the purpose of computing the tax for the calendar year 1936 or any calendar year thereafter.

ART. 5. Computation of tax.—The first step in the determination of the tax is to ascertain the amount of the net gifts for the calendar year for which the return is being prepared. (For meaning of "net gifts," see article 9.) The second step is to ascertain the aggregate sum of the net gifts for each of the preceding calendar years, considering only gifts made after June 6, 1932. By the words "aggregate sum of the net gifts for each of the preceding calendar years" (aside from the amount of the specific exemption deductible) is meant the true and correct aggregate of such net gifts, not necessarily that returned for such years and in respect to which tax was paid. In determining the aggregate sum of the net gifts for each of the preceding calendar years, the total amount of the specific exemption claimed and allowed for such preceding years should be deducted, except that if tax is being computed for the calendar year 1936, or for any calendar year thereafter, such deduction can not exceed \$40,000. (See article 12.) The third step is to add to the amount of net gifts for the calendar year for which the return is being prepared the aggregate sum of the net gifts for each of the preceding calendar years. The fourth step is to compute the tax upon the total amount of net gifts (as ascertained by the third step) by use of the rate schedule in force for the calendar year for which the return is being prepared. (See articles 6 and 7.) The fifth step is to compute a tax in accordance with the same rate schedule upon the aggregate sum of net gifts for each of the preceding calendar years only. The sixth step is to subtract from the amount of tax as computed in the fourth step the amount of tax as computed in the fifth step. The amount remaining after such subtraction is the tax for the calendar year for which the return is being prepared.

If no reportable gifts were made during the preceding calendar years, considering only gifts made after June 6, 1932, the tax for the calendar year for which the return is being prepared is the tax computed in accordance with the rate schedule in force for such year upon the amount of the net gifts for such calendar year.

ART. 6. Tax rate schedules.—The rate schedule in the Revenue Act of 1932 (section 502) is applicable in the computation of tax for the calendar years 1932, 1933, and 1934, the tax year 1932 being

limited to the portion of the year 1932 subsequent to June 6, 1932. The rates were increased by the Revenue Act of 1934, and the rate schedule in that Act (section 520) is applicable in the computation of tax for the calendar year 1935. The rates were further increased by the Revenue Act of 1935, and the rate schedule in such Act (section 301) is applicable in the computation of tax for the calendar year 1936 and for each calendar year thereafter. On the following page is set out a tabulation of the several rate schedules covering each of the three named periods:

TABLE FOR COMPUTING GIFT TAX

(A) Amount of net gifts equaling—	(B) Amount of net gifts not exceeding—	(1) In effect for calendar year 1936 and for each calendar year thereafter		(2) In effect for calendar year 1935		(3) In effect for portion of calendar year 1932 after June 5, 1932, and for calendar years 1933 and 1934	
		Tax on amount in column A	Rate of tax on excess over amount in column A Per cent	Tax on amount in column A	Rate of tax on excess over amount in column A Per cent	Tax on amount in column A	Rate of tax on excess over amount in column A Per cent
-----	-----	-----	-----	-----	-----	-----	-----
\$10,000	\$10,000	\$150	1½	\$75	¾	\$75	¾
20,000	20,000	450	3	225	1½	225	1½
30,000	30,000	900	4½	450	2¼	450	2¼
40,000	40,000	1,500	6	750	3	750	3
50,000	50,000	2,250	7½	1,125	3¾	1,125	3¾
70,000	70,000	4,050	9	2,175	5¼	2,175	5
100,000	100,000	7,200	10½	4,200	6¾	3,625	5
200,000	200,000	19,950	12¾	13,200	9	10,125	6½
400,000	400,000	49,950	15	37,200	12	26,125	8
600,000	600,000	84,450	17½	65,700	14½	45,125	9½
800,000	800,000	123,450	19½	98,700	16½	67,125	11
1,000,000	1,000,000	166,950	21¼	136,200	18½	92,125	12½
1,500,000	1,500,000	286,950	24	241,200	21	162,125	14
2,000,000	2,000,000	418,200	26¼	357,450	23½	239,625	15½
2,500,000	2,500,000	560,700	28½	484,950	25½	324,625	17
3,000,000	3,000,000	714,450	30¾	623,700	27¾	417,125	18½
3,500,000	3,500,000	879,450	33	773,700	30	517,125	20
4,000,000	4,000,000	1,055,700	35¼	934,950	32¼	624,625	21½
4,500,000	4,500,000	1,243,200	37½	1,107,450	34½	739,625	23
5,000,000	5,000,000	1,441,950	39¾	1,287,450	36	862,125	24½
6,000,000	6,000,000	1,861,950	42	1,662,450	37½	1,122,125	26
7,000,000	7,000,000	2,304,450	44½	2,052,450	39	1,397,125	27½
8,000,000	8,000,000	2,761,950	45½	2,457,450	40½	1,687,125	29
9,000,000	9,000,000	3,234,450	47¼	2,877,450	42	1,992,125	30½
10,000,000	10,000,000	3,721,950	48¾	3,312,450	43½	2,312,125	32
20,000,000	20,000,000	8,746,950	50¼	7,812,450	45	5,662,125	33½
50,000,000	50,000,000	24,271,950	51¾	21,312,450	45	15,712,125	33½
			52¾				

ART. 7. Application of rate schedules.—In computing tax, select the amount set out in column A which is equal to, or which is the largest amount shown therein that is less than, the amount of the net gifts. The tax upon the amount so selected is indicated on the same line in the first subcolumn of column 1, 2, or 3. The tax upon any part of the amount of the net gifts in excess of the amount so selected is computed by multiplying the amount of such excess by the percentage indicated on the same line in the second subcolumn of column 1, 2, or 3. If the amount of the net gifts is less than \$10,000, the tax is computed at the rate indicated on the first line in the second subcolumn of the appropriate column. An illustration of the use of the table follows.

The tax according to the rate schedule in column 1 upon net gifts of \$52,500 is computed as follows:

Tax on \$50,000 (from first subcolumn of column 1).....	\$2, 250
Tax on \$2,500 at 9 per cent (from second subcolumn of column 1).....	225
Tax on net gifts of \$52,500.....	<u>2, 475</u>

Care should be exercised in selecting the appropriate rate schedule (column 1, 2, or 3). Only column 1 should be used in the computation of the tax for the year 1936 or any year thereafter. Only column 2 should be used in the computation of the tax for the year 1935. Only column 3 should be used in the computation of the tax for the years 1932, 1933, or 1934.

Example: The donor's first reportable gifts after the enactment of the Revenue Act of 1932 were in the calendar year 1934, when he made a gift of \$75,000 to A and a gift of \$55,000 to B. The total amount of gifts during 1934, for the purposes of the tax, was \$120,000, after excluding \$10,000 for the two donees in accordance with the provisions of article 10. The amount of the net gifts for that year was \$70,000, after deducting the \$50,000 specific exemption in accordance with the provisions of article 12. The tax on the net gifts of \$70,000, as shown in the first subcolumn of column 3 of the table, amounts to \$2,125.

During the calendar year 1935, the donor made a gift of \$20,000 to A and a gift of \$25,000 to B. After excluding \$10,000 for the two donees, the total amount of gifts during that year was \$35,000. Since the amount of the specific exemption authorized was exhausted, the amount of the net gifts for 1935 was \$35,000. The tax for the calendar year 1935 is computed as follows:

1. Amount of net gifts for 1935.....	\$35, 000
2. Net gifts for preceding calendar year (1934).....	<u>70, 000</u>
3. Total amount of net gifts.....	<u>105, 000</u>
4. Tax computed on item 3.....	4, 650
5. Tax computed on item 2.....	<u>2, 175</u>
6. Tax for year 1935 (item 4 minus item 5).....	<u>2, 475</u>

It will be noted that column 2 is used for both item 4 and item 5, although the rate schedule shown in column 3 was previously used in the computation of the tax for the calendar year 1934.

During the calendar year 1936, the donor made a gift of \$30,000 to A and a gift of \$35,000 to B. After excluding \$10,000 for the two donees, the total amount of gifts made during that year was \$55,000. Since the specific exemption was previously exhausted, the amount of the net gifts for 1936 was \$55,000. The total amount of gifts made by the donor during the preceding calendar years, after excluding \$5,000 for each donee for each calendar year, was as follows:

Calendar year 1934.....	\$120, 000
Calendar year 1935.....	35, 000
Total amount of gifts for preceding calendar years.....	155, 000

The aggregate sum of the net gifts for the preceding calendar years, \$115,000, is determined by deducting a specific exemption of \$40,000 from \$155,000. As stated in article 5 (pursuant to subsection (c) of section 301 of the Revenue Act of 1935), if tax is being computed for the calendar year 1936, or for any calendar year thereafter, the amount of the specific exemption deductible in determining the "aggregate sum of the net gifts for the preceding calendar years" can not exceed \$40,000. The computation of the tax for the calendar year 1936 is shown below:

1. Amount of net gifts for 1936.....	\$55, 000. 00
2. Aggregate sum of net gifts for preceding calendar years (1934 and 1935).....	115, 000. 00
3. Total amount of net gifts.....	170, 000. 00
4. Tax computed on item 3.....	16, 125. 00
5. Tax computed on item 2.....	9, 112. 50
6. Tax for year 1936 (item 4 minus item 5).....	7, 012. 50

It will be noted that column 1 is used for both item 4 and item 5, although the rate schedules shown in columns 3 and 2 were previously used in the computation of the tax for the calendar years 1934 and 1935, respectively.

SEC. 503. TRANSFER FOR LESS THAN ADEQUATE AND FULL CONSIDERATION.

Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this title, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

ART. 8. Transfers for a consideration in money or money's worth.—Transfers reached by the statute are not confined to those only which,

being without a valuable consideration, accord with the common law concept of gifts, but embrace as well sales, exchanges, and other dispositions of property for a consideration in money or money's worth to the extent that the value of the property transferred by the donor exceeds the value of the consideration given therefor. However, a sale, exchange, or other transfer of property made in the ordinary course of business (a transaction which is bona fide, at arm's length, and free from any donative intent), will be considered as made for an adequate and full consideration in money or money's worth. A consideration not reducible to a money value, as love and affection, promise of marriage, etc., is to be wholly disregarded, and the entire value of the property transferred constitutes the amount of the gift.

SEC. 504. NET GIFTS.

(a) **General definition.**—The term "net gifts" means the total amount of gifts made during the calendar year, less the deductions provided in section 505.

(b) **Gifts less than \$5,000.**—In the case of gifts (other than of future interests in property) made to any person by the donor during the calendar year, the first \$5,000 of such gifts to such person shall not, for the purposes of subsection (a), be included in the total amount of gifts made during such year.

ART. 9. Net gifts.—The tax is computed upon the amount of the donor's net gifts (see articles 5, 6, and 7). The term "net gifts" means the "total amount of gifts" computed as provided in section 504 (see article 10), less the deductions provided in section 505. (See articles 12 and 13.)

ART. 10. Total amount of gifts.—In determining the amount of gifts during any calendar year, there is excluded (save in the case of a gift or gifts of a future interest or interests) the first \$5,000 of any single gift or aggregate of gifts made during such year to any one donee. A gift or gifts made during a given calendar year to any one donee of \$5,000, or less, should not be listed on the return, unless consisting of a future interest or interests, or unless consisting of a present interest or interests created out of the same property in which a future interest or interests has been given. Gifts of future interests in property are required to be included in the total amount of gifts for the year even though the value of such gifts is \$5,000, or less, and if such interest exceeds \$5,000 in value, no part of the value is excluded from the total amount of gifts for the year whether the gift or gifts be to a single donee or to a number of donees. For example, if the donor during the calendar year made a gift to A of \$5,000 in money, a gift to B of \$6,000 in money, and a gift to C of a future interest in property, such future interest being valued at \$3,000, the total amount of gifts during such year, for the purposes of the tax, is \$4,000.

ART. 11. Future interests in property.—No part of the value of a gift of a future interest may be excluded in determining the total

amount of gifts made during the calendar year. "Future interests" is a legal term, and includes reversions, remainders, and other interests or estates, whether vested or contingent, and whether or not supported by a particular interest or estate, which are limited to commence in use, possession, or enjoyment at some future date or time. The term has no reference to such contractual rights as exist in a bond, note (though bearing no interest until maturity), or in a policy of life insurance, the obligations of which are to be discharged by payment in the future. But a future interest or interests in such contractual obligations may be created by the limitations contained in a trust or other instrument of transfer employed in effecting a gift. For the valuation of future interests, see subdivision (7) of article 19.

SEC. 505 (AS AMENDED BY SECTION 517 OF THE REVENUE ACT OF 1934). DEDUCTIONS.

In computing net gifts for any calendar year there shall be allowed as deductions:

(a) **Residents.**—In the case of a citizen or resident—

(1) **SPECIFIC EXEMPTION.**—An exemption of \$50,000, less the aggregate of the amounts claimed and allowed as specific exemption for preceding calendar years.

(2) **CHARITABLE, ETC., GIFTS.**—The amount of all gifts made during such year to or for the use of—

(A) the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(B) a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals; no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(C) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(D) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual;

(E) the special fund for vocational rehabilitation authorized by section 12 of the World War Veterans' Act, 1924.

(b) **Nonresidents.**—In the case of a nonresident not a citizen of the United States, the amount of all gifts made during such year to or for the use of—

(1) the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals; no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(3) a trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; but only if such gifts are to be used within the United States exclusively for such purposes;

(4) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used within the United States exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(5) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual;

(6) the special fund for vocational rehabilitation authorized by section 12 of the World War Veterans' Act, 1924.

(c) The deductions provided in subsection (a) (2) or (b) shall be allowed only to the extent that the gifts therein specified are included in the amount of gifts against which such deductions are applied.

SEC. 301, REVENUE ACT OF 1935. * * *

(b) Section 505 (a) (1) of the Revenue Act of 1932 (relating to the specific exemption for gift-tax purposes) is amended by striking out "\$50,000" and inserting in lieu thereof "\$40,000".

(c) The amendments made by subsections (a) and (b) of this section shall be applied in computing the tax for the calendar year 1936 and each calendar year thereafter (but not the tax for the calendar year 1935 or a previous calendar year), and such amendments shall be applied in all computations in respect of the calendar year 1935 and previous calendar years for the purpose of computing the tax for the calendar year 1936 or any calendar year thereafter.

ART. 12. Specific exemption.—In determining the amount of net gifts of a given calendar year there may be deducted, if the donor was a resident or citizen of the United States at the time the gifts were made, a specific exemption of \$40,000 (\$50,000 if the calendar year is before 1936), less the sum of the amounts claimed and allowed as an exemption in prior calendar years. The exemption, at the option of the donor, may be taken in its entirety in a single year, or be spread over a period of years in such amounts as he sees fit, but after the

limit has been reached no further exemption is allowable. In determining the aggregate sum of the net gifts for the preceding calendar years (see article 5), the total amount of the specific exemption claimed and allowed for such preceding years should be deducted, except that if tax is being computed for the calendar year 1936 or for any calendar year thereafter such deduction can not exceed \$40,000. The specific exemption is authorized only in the case of a citizen or resident of the United States. A donor, who was a nonresident alien at the time of the gift or gifts, is not entitled to this exemption.

ART. 13. Charitable, etc., gifts.—In determining the amount of net gifts of a given calendar year, in the case of a donor who was a citizen or resident of the United States at the time when the gifts were made, there may be deducted the amount of such gifts as were to or for the use of (A) the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes; or (B) any corporation, trust, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, provided no part of the net earnings of such organization inures to the benefit of any private shareholder or individual, and no substantial part of its activities is carrying on propaganda, or otherwise attempting, to influence legislation; or (C) a fraternal society, order, or association, operating under the lodge system, provided such gifts are to be used by such fraternal society, order, or association exclusively for one or more of the purposes enumerated in (B); or (D) any organization of war veterans or auxiliary unit or society thereof if such organization, auxiliary unit, or society thereof is organized in the United States or any of its possessions, and if no part of its net earnings inures to the benefit of any private shareholder or individual; or (E) the special fund for vocational rehabilitation authorized by section 12 of the World War Veterans' Act, 1924.

In case the donor was a nonresident alien of the United States at the time the gifts were made, the deduction of the amount of charitable, etc., gifts is governed by the same rules as those applying to similar gifts made by citizens or residents, subject, however, to the two following exceptions: (1) If the gift be made to or for the use of a corporation, such corporation must be one created or organized under the laws of the United States or of any State or Territory thereof; and (2) if made to or for the use of a trust, or community chest, fund, or foundation, or a fraternal society, order, or association, operating under the lodge system, the gift must be for use within the United States exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals.

The deduction is not limited in the case of donors who were citizens or resident aliens to gifts to or for the use of domestic corporations, or for use within the United States when made to a trust, or community chest, fund, or foundation, or a fraternal society, order, or association, operating under the lodge system.

If money or other property is so given that the income is, for the duration of a life or a term of years, to be paid to the donor or other individual, or is to be used for a purpose not described in section 505 (a) (2) or (b), and the property is then to be devoted exclusively to some one or more of the uses described in section 505 (a)(2) or (b), only the present worth of the remainder is deductible. To determine the present worth or value of such remainder (that is, its value as of the date of the gift), the amount of the money or the value of the property transferred should be multiplied by the appropriate factor in column 3 of Table A or B, a part of article 19.

ART. 14. Religious, charitable, scientific, literary, and educational organizations.—The corporation, or trust, or community chest, fund, or foundation to which a gift is made must meet three tests to entitle the donor to deduct the amount of the gift: (1) It must be organized and operated exclusively for one or more of the purposes specified in the statute; (2) it must not by a substantial part of its activities carry on propaganda, or otherwise attempt, to influence legislation; and (3) no part of its net earnings shall inure to the benefit of private shareholders or individuals.

The donor is not deprived of the right to deduct an amount equal to the value of property so transferred by reason of the fact that private individuals are the recipients of the benefits which the organization dispenses. Such right is lost, however, where any part of the net earnings of the organization inures to the benefit of a private shareholder or individual.

ART. 15. Proof required.—In order to prove the right to this deduction, the donor must submit such documents or evidence as may be requested by the Commissioner.

ART. 16. Charitable, etc., gifts with power to divert.—If a fraternal society, order, or association, operating under the lodge system, is empowered to divert a part of the property or fund transferred by gift to a use or purpose which would have rendered it, to the extent that it is subject to such power, not deductible had it been directly transferred by the donor for such use or purpose, deduction will be limited to that part of the property or fund which is not subject to the exercise of the power.

SEC. 506. GIFTS MADE IN PROPERTY.

If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.

ART. 17. Gifts made in property.—A gift made in property is subject to the tax in the same manner as a gift of cash, and the amount of the gift is the value of the property at the date of the gift.

ART. 18. Situs of property.—The statute imposes a tax upon gifts made by citizens of the United States, residents or nonresidents thereof, and upon those made by residents of the United States, citizens or aliens, irrespective of whether the property transferred (real or personal, tangible or intangible) be situated within or without the United States. But gifts by nonresidents of the United States who are not citizens thereof (see article 4) are subject to tax only if the property transferred is, at the time of the transfer, situated within the United States.

Real estate and tangible personal property physically located in the United States constitute property having a situs in the United States. Intangible personal property, such as a bond, share of stock, note, insurance contract, simple debt, or other chose in action, has a situs in the United States if consisting of a property right issuing from or enforceable against a corporation (public or private) organized in the United States or a person who is a resident of the United States. Intangible personal property also has a situs in the United States if the certificate of stock, bond, bill, note, or other written evidence of such property, which is customarily treated as being the property itself, is physically located in the United States, whether such certificate of stock, bond, etc., was issued by a resident or nonresident of the United States. For example, a share of stock of a corporation organized in the United States constitutes property situated in the United States even though the stock certificate is in England; and a share of stock of a corporation organized in England constitutes property situated in the United States if the stock certificate is in the United States.

Paragraph (10) of section 1111 (a) of the Revenue Act of 1932 defines the term "United States," when used in a geographical sense, as including only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

ART. 19. Valuation of property.—(1) *General.*—The statute provides that if the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift. The value of the property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. The value of a particular kind of property is not to be determined by a forced sale price or by an estimate of what a whole block or aggregate would fetch if placed upon the market at one and the same time. Such value is to be determined by ascertaining as a basis the fair market value at the time of the gift of each unit of the property. For example, in the case of shares of

stock or bonds, such unit of property is a share or a bond. All relevant facts and elements of value as of the time of the gift should be considered. Depreciation or appreciation in value subsequent to the time of the gift are not relevant factors and will not be considered.

(2) *Real estate*.—In returning a gift of real estate, the local assessed value thereof should not be returned as the value of the gift unless such value represents the fair market value of the property as of the date of the gift. (See article 24 for manner of listing and describing real estate in returns.)

(3) *Stocks and bonds*.—The value at the date of the gift in the case of stocks and bonds, within the meaning of the statute, is the fair market value per share or bond on such date.

The value of stocks and bonds listed upon a stock exchange shall be obtained by taking the mean between the highest and lowest quoted selling prices upon the date of the gift. If the gift was made on Sunday or on a legal holiday, the transactions of the next previous business day will govern. If there were no sales on the date of the gift, the value shall be determined by taking the mean between the highest and lowest sales upon the nearest date either before or after the date of the gift, if within a reasonable period thereof. If the security was listed upon more than one exchange, the records of the exchange where the security was principally dealt in should be employed. In valuing listed stocks and bonds the donor should observe care to consult accurate records to obtain values as of the date of the gift.

If the securities are not listed upon an exchange, but are dealt in through brokers, or have a market, the value should be determined by taking the mean between the highest and lowest selling prices as of the date of the gift, or, if there were no sale on that date, of the nearest date either before or after the date of the gift upon which sales were made, if within a reasonable period. If quotations are obtained from brokers, or evidence as to the sale of securities is obtained from the officers of the issuing companies, the donor should preserve in his files the letters furnishing such quotations, or evidence of sale, for inspection when the return is verified by an investigating officer.

If securities are quoted on a bona fide bid and asked basis, and actual sales are not available, the mean between the bid and asked prices on the date of the gift, or if not quoted as of the date of the gift, the mean between such prices on the nearest date thereto within a reasonable time, will be accepted as the value.

If the value of a security cannot be determined by sales, or from bid and asked prices, as prescribed in the preceding provisions of this subdivision, then, in the case of corporate or other bonds, the value is to be arrived at by giving consideration to the soundness of

the security, the interest yield, the date of maturity, and other relevant factors, and, in the case of shares of stock, upon the basis of the company's net worth, earning power, dividend-paying capacity, and all other relevant factors having a bearing upon the value of the stock. Complete financial and other data upon which the donor bases his valuation should be submitted with the return.

In exceptional cases in which it is established by clear and convincing evidence that the value per bond or share of any security determined upon the basis of selling or bid and asked prices as herein provided does not reflect the fair market value thereof, other relevant facts and elements of value will be considered in determining the fair market value. The size of the gift of any security is not a relevant factor and will not be considered in such determination.

(4) *Interest in business.*—Care should be taken to arrive at an accurate valuation of any business which the donor transfers without an adequate and full consideration in money or money's worth, whether the interest transferred is that of a partner or of a proprietor. A fair appraisal as of the date of the gift should be made of all the assets of the business, tangible and intangible, including good will, and the business should be given a net value equal to the amount which a willing purchaser, whether an individual or a corporation, would pay therefor to a willing seller in view of the net value of the assets of the business and its demonstrated earning capacity. Special attention should be given to fixing an adequate figure for the value of the good will of the business.

The factors hereinbefore stated relative to the valuation of other property, if applicable, will be considered in determining the valuation of a proprietary or partnership interest in the business. All evidence bearing upon such valuation should be submitted with the return, including copies of reports in any case in which examinations of the business have been made by accountants, engineers, or any technical experts as of or near the date of the gift.

(5) *Notes, secured and unsecured.*—The value of notes, whether secured or unsecured, will be presumed to be the amount of unpaid principal, plus accrued interest to the date of the gift, unless the donor establishes a lower value. Unless returned at face value, plus accrued interest, it must be shown by satisfactory evidence that the note is worth less than the unpaid amount because of the interest rate, or date of maturity, or other cause, or that the note is uncollectible in part by reason of the insolvency of the party or parties liable, or for other cause, and that the property, if any, pledged or mortgaged as security is insufficient to satisfy it.

(6) *Other property.*—Any property not specifically treated in this article should be valued in accordance with the rule laid down in subdivision (1) hereof.

(7) *Annuities, life, remainder and reversionary interests.*—For valuation of annuities purchased from life insurance companies or other companies issuing annuity contracts, see subdivision (9) of this article. In case the donor creates a trust under which a specified annuity is payable to the donee, the value of such gift should be determined by using Table A or Table B, whichever is applicable, shown at the end of this article. If the annuity is payable at the end of each annual period, the factor is obtained directly from the table. If the annuity is payable for the life of an individual, the amount payable annually should be multiplied by the figure in column 2 of Table A opposite the number of years in column 1 of such table nearest the age of the individual (as of the date of the gift) whose life measures the duration of the annuity, or if payable for a definite number of years the amount payable annually should be multiplied by the figure in column 2 of Table B opposite the number of years in column 1 of such table.

Example: The donee is made the beneficiary of an annuity of \$10,000 payable at the end of annual periods during his life. The age of the donee at the date of the gift is 40 years and 8 months. By reference to Table A, the figure in column 2 opposite 41 years, the number nearest to the donee's age, is 14.86102. The value of the gift is, therefore, \$148,610.20 (\$10,000 multiplied by 14.86102).

Example: The donor was entitled to receive an annuity of \$10,000 a year payable at the end of annual periods throughout a term of 20 years; the donor, when 15 years have elapsed, makes a gift thereof to his son. By reference to Table B, it is found that the figure in column 2 opposite 5 years, the unexpired portion of the 20-year period, is 4.45182. The present worth of the annuity is, therefore, \$44,518.20 (\$10,000 multiplied by 4.45182).

If the annuity is payable semiannually, quarterly, or monthly, the value should be determined by multiplying the aggregate amount to be paid within a year by the figure in column 2 of Table A opposite the number of years in column 1 nearest the actual age of the person whose life measures the annuity, or the figure in column 2 of Table B opposite the number of years the annuity is payable, as the case may be, and then multiplying the product by 1.01820 for monthly payments, by 1.01488 for quarterly payments, or by 1.00990 for semiannual payments.

Example: If, in the first example above given, the annuity is payable semiannually, the factor, 14.86102, should be multiplied by 1.00990 and the product multiplied by 10,000. The value of the gift is, therefore, \$150,081.44 ($\$10,000 \times 14.86102 \times 1.00990$).

If the first payment of an annuity for the life of an individual is to be paid at once, the value of the annuity is the sum of the first

payment plus the present worth of a similar annuity the first payment of which is not to be made until the end of the first period.

Example: The donee is made the beneficiary for life of an annuity of \$50 a month payable from the income of a trust, subject to the right reserved by the donor to cause the annuity to be payable to himself or for the benefit of his creditors or estate. On the day a payment is due, the donor relinquishes his reserved power. The donee is then 50 years of age. The value of the gift is \$50 plus the product of \$50 times 12 times 12.47032 (see Table A) times 1.01820 (see preceding paragraph), or \$7,668.37 [$\$50 \text{ plus } (\$50 \times 12 \times 12.47032 \times 1.01820)$].

If the first payment of an annuity for a definite number of years is to be paid at once, the applicable factor is the product of the factor shown in Table B multiplied by 1.02154 for monthly payments, by 1.02488 for quarterly payments, by 1.02990 for semiannual payments, or by 1.04 for annual payments.

Example: The donee is the beneficiary of an annuity of \$50 a month subject to a reserved right in the donor to cause the annuity or the cash value thereof to be paid to himself or his creditors. On the day a payment is due, the donor relinquishes his power. There are 300 payments to be made, including the payment due. The value of the gift is the product of \$50 times 12 times 15.62208 (see Table B) times 1.02154 (see preceding paragraph), or \$9,575.15 ($\$50 \times 12 \times 15.62208 \times 1.02154$).

If an annuity is to be paid during the life of an individual and in any event for a definite number of years, or for more than one life, or in any other manner rendering inapplicable both Table A and Table B, the case may be stated to the Commissioner, who will thereupon make the computation and advise the donor thereof. In making such calculations when life interests or remainders upon life interests are involved, use will be made of the Actuaries' or Combined Experience Table of Mortality, as extended (that being the basis of Table A), with interest at 4 per cent per annum compounded annually.

If a gift consists of the donor's right to receive the entire income of certain property during the life of Z, or for a term of years, and the annual rate of income for a period equal to or exceeding the life expectancy of Z, or for such term of years, is fixed or definitely determinable at the time of the gift, then the value of the gift should be computed as explained above in the case of an annuity. If the rate of annual income is not determinable, or if the donor is entitled merely to the use of nonincome-producing property, a hypothetical annuity at the rate of 4 per cent of the value of the property should be made the basis of the calculation.

If the gift is of a remainder or reversionary interest subject to an outstanding life estate, the value of the gift will be obtained by multiplying the value of the property at the date of the gift by the figure in column 3 of Table A opposite the number of years nearest to the age of the life tenant. In case the remainder or reversion is subject to an estate for a term of years, Table B should be used.

Example: The donor transferred by gift property worth \$50,000 which he was entitled to receive upon the death of his brother, to whom the income for life had been bequeathed. The brother at the date of the gift was 31 years of age. By reference to Table A, it is found that the figure in column 3 opposite 31 years is 0.31262. The value of the gift is, therefore, \$15,631 ($\$50,000 \times 0.31262$).

(8) *Tenancies by the entirety*.—Should either a husband or his wife purchase property and cause the title thereto to be conveyed to themselves as tenants by the entirety, or should either cause to be created such a tenancy in property already owned by him or her, and under the law of the jurisdiction governing the rights of the spouses with respect to the property neither of them may, acting alone, defeat the right of the survivor of them to the whole of the property, the transfer effects a gift from the spouse owning the property at the time of the creation of the tenancy or who furnished the consideration in the purchase of the property. The value of the gift is the sum of (1) the value of the right, if any, of the donee spouse to a share of the income or other enjoyment of the property during the joint lives of the spouses, and, (2) the value of the right of the donee spouse to the whole of the property should he or she be the survivor of them. The value of each of such rights is to be determined in accordance with the Actuaries' or Combined Experience Table of Mortality, as extended.

A case involving the value of the right of survivorship (provided the gift is completed and not merely proposed or hypothetical) may be submitted to the Commissioner, who will, in accordance with recognized actuarial principles, compute the applicable factor to be used in determining such value, and will advise the donor of the factor.

(9) *Life insurance and annuity contracts*.—The value of a life insurance contract or of a contract for the payment of an annuity issued by a company regularly engaged in the selling of contracts of that character is established through the sale of the particular contract by the company, or through the sale by the company of comparable contracts. As valuation through sale of comparable contracts is not readily ascertainable when the gift is of a contract which has been in force for some time and on which further premium payments are to be made, the value may be approximated, unless because of the unusual nature of the contract such approximation

is not reasonably close to the full value, by adding to the interpolated terminal reserve at the date of the gift the proportionate part of the gross premium last paid before the date of the gift which covers the period extending beyond that date.

The examples given below, so far as relating to life insurance contracts, are of gifts of such contracts on which there are no accrued dividends or outstanding indebtedness.

Example: A donor purchases from a life insurance company for the benefit of another a life insurance contract or a contract for the payment of an annuity; the value of the gift is the cost of the contract.

*Example:** An annuitant, having purchased from a life insurance company a single payment annuity contract by the terms of which he was entitled to receive payments of \$1,200 annually for the duration of his life, five years subsequent to such purchase, and when of the age of 50 years, gratuitously assigns the contract. The value of the gift is the amount which the company would charge for an annuity contract providing for the payment of \$1,200 annually for the life of a person 50 years of age.

Example: A donor owning a life insurance policy on which no further payments are to be made to the company (e. g., a single premium policy or paid-up policy) makes a gift of the contract. The value of the gift is the amount which the company would charge for a single premium contract of the same specified amount on the life of a person of the age of the insured.

Example: A gift is made four months after the last premium due date of an ordinary life insurance policy issued nine years and four months prior to the gift thereof by the insured, who was 35 years of age at date of issue. The gross annual premium is \$2,811. The computation follows:

Terminal reserve at end of tenth year.....	\$14, 601. 00
Terminal reserve at end of ninth year.....	12, 965. 00
Increase.....	1, 636. 00
One-third of such increase (the gift having been made four months following the last preceding premium due date), is.....	\$545. 33
Terminal reserve at end of ninth year.....	12, 965. 00
Interpolated terminal reserve at date of gift.....	13, 510. 33
Two-thirds of gross premium (\$2,811).....	1, 874. 00
Value of the gift.....	15, 384. 33

TABLE A

Table, single life, 4 per cent, showing the present worth of an annuity, or a life interest, and of a reversionary interest

1	2	3	1	2	3
Age	Annuity, or present value of \$1 due at the end of each year during the life of a person of specified age	Reversion, or present value of \$1 due at the end of the year of death of a person of specified age	Age	Annuity, or present value of \$1 due at the end of each year during the life of a person of specified age	Reversion, or present value of \$1 due at the end of the year of death of a person of specified age
	<i>Annuity</i>	<i>Reversion</i>		<i>Annuity</i>	<i>Reversion</i>
0	\$14. 72829	\$0. 39507	51	\$12. 17919	\$0. 49311
1	17. 30771	. 29586	52	11. 88408	. 50446
2	18. 69578	. 24247	53	11. 58531	. 51595
3	19. 15901	. 22465	54	11. 28325	. 52757
4	19. 41226	. 21491	55	10. 97789	. 53931
5	19. 55301	. 20950	56	10. 66982	. 55116
6	19. 61731	. 20703	57	10. 35931	. 56310
7	19. 62502	. 20673	58	10. 04630	. 57514
8	19. 61097	. 20727	59	9. 73131	. 58726
9	19. 53413	. 21022	60	9. 41474	. 59943
10	19. 45359	. 21332	61	9. 09765	. 61163
11	19. 36943	. 21656	62	8. 78052	. 62383
12	19. 28184	. 21993	63	8. 46412	. 63600
13	19. 19065	. 22344	64	8. 14888	. 64812
14	19. 09590	. 22708	65	7. 83552	. 66017
15	18. 99764	. 23086	66	7. 52476	. 67212
16	18. 89569	. 23478	67	7. 21699	. 68397
17	18. 79010	. 23884	68	6. 91298	. 69565
18	18. 68070	. 24305	69	6. 61301	. 70719
19	18. 56751	. 24740	70	6. 31716	. 71857
20	18. 45038	. 25191	71	6. 02612	. 72976
21	18. 32932	. 25656	72	5. 74003	. 74077
22	18. 20416	. 26138	73	5. 45928	. 75157
23	18. 07471	. 26636	74	5. 18402	. 76215
24	17. 94097	. 27150	75	4. 91463	. 77251
25	17. 80274	. 27682	76	4. 65125	. 78264
26	17. 65984	. 28231	77	4. 39383	. 79254
27	17. 51224	. 28799	78	4. 14286	. 80220
28	17. 35968	. 29386	79	3. 89858	. 81159
29	17. 20225	. 29991	80	3. 66071	. 82074
30	17. 03961	. 30617	81	3. 42900	. 82965
31	16. 87176	. 31262	82	3. 20258	. 83836
32	16. 69846	. 31929	83	2. 98024	. 84691
33	16. 51964	. 32617	84	2. 76106	. 85534
34	16. 33503	. 33327	85	2. 54366	. 86371
35	16. 14437	. 34060	86	2. 32795	. 87200
36	15. 94755	. 34817	87	2. 11384	. 88024
37	15. 74427	. 35599	88	1. 90115	. 88842
38	15. 53421	. 36407	89	1. 69107	. 89650
39	15. 31722	. 37241	90	1. 48540	. 90441
40	15. 09295	. 38104	91	1. 28432	. 91214
41	14. 86102	. 38996	92	1. 09024	. 91961
42	14. 62122	. 39918	93	. 90647	. 92667
43	14. 37356	. 40871	94	. 73687	. 93320
44	14. 11860	. 41852	95	. 58435	. 93906
45	13. 85713	. 42857	96	. 46182	. 94378
46	13. 58958	. 43886	97	. 36698	. 94742
47	13. 31698	. 44935	98	. 24038	. 95229
48	13. 03942	. 46002	99	. 00000	. 96154
49	12. 75716	. 47088			
50	12. 47032	. 48191			

TABLE B

Table showing the present worth at 4 per cent of an annuity for a term certain, and of a reversionary interest postponed for a term certain

1	2	3	1	2	3
Number of years	Present worth of an annuity of \$1, payable at the end of each year, for a certain number of years	Present worth of \$1, payable at the end of a certain number of years	Number of years	Present worth of an annuity of \$1, payable at the end of each year, for a certain number of years	Present worth of \$1, payable at the end of a certain number of years
	<i>Annuity</i>	<i>Reversion</i>		<i>Annuity</i>	<i>Reversion</i>
1	\$0. 96154	\$0. 961538	16	\$11. 65229	\$0. 533908
2	1. 88609	. 924556	17	12. 16567	. 513373
3	2. 77509	. 888996	18	12. 65929	. 493628
4	3. 62989	. 854804	19	13. 13394	. 474642
5	4. 45182	. 821927	20	13. 59032	. 456387
6	5. 24214	. 790314	21	14. 02916	. 438834
7	6. 00205	. 759918	22	14. 45111	. 421955
8	6. 73274	. 730690	23	14. 85684	. 405726
9	7. 43533	. 702587	24	15. 24696	. 390121
10	8. 11089	. 675564	25	15. 62208	. 375117
11	8. 76047	. 649581	26	15. 98277	. 360689
12	9. 38507	. 624597	27	16. 32958	. 346816
13	9. 98565	. 600574	28	16. 66306	. 333477
14	10. 56312	. 577475	29	16. 98371	. 320651
15	11. 11839	. 555265	30	17. 29203	. 308319

SEC. 507. RETURNS.

(a) **Requirement.**—Any individual who within the calendar year 1932 or any calendar year thereafter makes any transfers by gift (except those which under section 504 are not to be included in the total amount of gifts for such year) shall make a return under oath in duplicate. The return shall set forth (1) each gift made during the calendar year which under section 504 is to be included in computing net gifts; (2) the deductions claimed and allowable under section 505; (3) the net gifts for each of the preceding calendar years; and (4) such further information as may be required by regulations made pursuant to law.

(b) **Time and place for filing.**—The return shall be filed on or before the 15th day of March following the close of the calendar year with the collector for the district in which is located the legal residence of the donor, or if he has no legal residence in the United States, then (unless the Commissioner designates another district) with the collector at Baltimore, Maryland.

ART. 20. Persons required to file return.—Any individual resident or citizen of the United States who within that portion of the calendar year 1932 subsequent to June 6, 1932, or within any calendar year thereafter, made a transfer by gift to any one donee which exceeded \$5,000 in value (or regardless of value if the gift was of a future interest) must file a gift tax return on Form 709. A nonresident alien who made such a gift must also file a return on Form 709 if the subject of the gift consisted of property situated in the United States. The return is required even though because of authorized deductions (the specific exemption, in the case of a resident or citizen,

and charitable, public, and similar gifts) no tax may be payable. Individuals only are required to file returns as donors, and not trusts, estates, partnerships, or corporations.

If the donor dies before filing his return, the executor of his will or the administrator of his estate shall file the return. If the donor becomes legally incompetent before filing his return, his guardian or committee shall file the return.

The return shall not be made by an agent unless by reason of illness, absence, or nonresidence, the person liable for the return is unable to make it within the time prescribed. Mere convenience is not sufficient reason for authorizing an agent to make the return. If by reason of illness, absence, or nonresidence, a return is made by an agent, such return must be ratified within a reasonable time by the donor or other person liable for its filing; otherwise the return filed by the agent will not be considered the return required by the statute. Supplemental data may be submitted at the time of ratification. The ratification must be in the form of an affidavit, filed with the Commissioner, and must specifically state that the return made by the agent has been carefully examined and that the affiant ratifies such return as his own.

ART. 21. Donees and trustees required to file notice of gifts.—All donees and trustees (except such organizations, etc., referred to in section 505 and article 13) receiving property transferred by gift in any one calendar year, shall file a notice on Form 710, unless the value of the gift, or the aggregate value of all the gifts, to the donee or to any one of the beneficiaries of the trust is \$5,000, or less, and the subject of the gift is not a future interest in property. Copies of this form may be obtained from any United States collector of internal revenue upon application. When a gift is made in trust notice thereof should be filed by either the beneficiary of the trust or the trustee, but in such case one notice only is required. If property is transferred in trust and the donor retains a power over the property, the notice (which is for information purposes only) should be filed even though it is considered that such power constitutes a retention of beneficial dominion and control and that by reason thereof the transfer is not a gift within the meaning of the statute. The notice shall be filed in duplicate with the collector for the district in which the donor resides, or with the Commissioner of Internal Revenue at Washington, D. C., on or before the 15th day of March following the close of the calendar year in which the transfer was made. The notice shall disclose the following information: (1) Name and address of donor, (2) date of transfer, (3) a general description of the property transferred, and (4) the approximate value thereof at the date of the transfer.

ART. 22. Time and place of filing return.—Gift tax returns must be filed in duplicate on or before the 15th day of March following the close of the calendar year in which gifts were made. The return shall be filed with the collector of internal revenue for the district in which is located the legal residence of the donor, or, if he has no legal residence in the United States, then, unless the Commissioner otherwise designates, with the collector of internal revenue at Baltimore, Md. When the due date for the filing of the return falls on a Sunday or a legal holiday, the due date will be the day next following which is not a Sunday or a legal holiday. If placed in the mails, the return should be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the date on which the return is required to be filed. If a return is made and so placed in the mails, properly addressed, and postage paid, in ample time to reach the office of the collector on or before the due date, no penalty will attach should the return not be actually received by such officer until subsequent to that date. As to additions to the tax in the case of failure to file a return within the period prescribed, see section 519 and article 52.

Section 3176, Revised Statutes, as amended by section 619(d), Revenue Act of 1928, provides:

* * * If the failure to file a return (other than a return of income tax) or a list is due to sickness or absence, the collector may allow such time, not exceeding 30 days, for making or filing the return or list as he deems proper. * * *

Such extension may be granted either before or after the due date. An extension of time for filing the return does not in itself operate to extend the time for the payment of the tax.

ART. 23. Form of return.—The return must be made on Form 709, copies of which will be supplied by the collector upon application. The return must be filed in duplicate and under oath, and therein must be listed and set forth all gifts (other than future interests in property) made by the donor during the calendar year to any one person to the extent that the aggregate value thereof exceeds \$5,000 and all gifts of future interests in property without regard to the value thereof. The return shall also set forth the fair market value of all gifts not made in money, including gifts resulting from sales and exchanges of property made for less than an adequate and full consideration in money or money's worth (see article 8), giving the fair market value of the property sold or exchanged and that of the consideration received by the donor, both as of the date of sale or exchange. The deductions claimed must also be fully set forth. The instructions printed on the form of return should be carefully followed. All documents and vouchers used in preparing the return should be retained by the donor so as to be available for inspection

by representatives of the Bureau whenever required. Duplicate certified or verified copies of all documents required by the instructions printed on the form, or any documents which the donor may desire to submit, should be filed with the return.

In addition to the list of gifts made during the calendar year for which the return is filed, the return shall set forth both the amount of gifts (other than charitable, public, and similar gifts) and the amount of specific exemption (see articles 5 and 12) claimed and allowed for each of the preceding calendar years.

The tax, if any, for the calendar year for which the return is filed shall be computed and entered on the return, as provided by the form. (See article 5.)

ART. 24. Description of property listed on return.—In listing upon the return the property comprising the gifts made during the calendar year, the description thereof should be such that the property may be readily identified. Thus, a legal description should be given of each parcel of real estate, and if located in a city the name of street and number, its area, and, if improved, a short statement of the character of the improvements. Description of bonds should include the number transferred, principal amount, name of obligor, date of maturity, rate of interest, date or dates on which interest is payable, series number where there is more than one issue, the exchange upon which listed, or the principal business office of the corporation, if unlisted. Description of stocks should include number of shares, whether common or preferred, and, if preferred, what issue thereof, par value, quotation at which returned, exact name of corporation, and, if the stock is unlisted, the location of the principal business office and State in which incorporated and the date of incorporation. If a listed security, state principal exchange upon which sold. Description of notes should include name of maker, date on which given, date of maturity, amount of principal, amount of principal unpaid, rate of interest and whether simple or compound, and date to which interest has been paid. Description of land contracts transferred should include name of vendee, date of contract, description of property, sale price, initial payment, amounts of installment payments, unpaid balance of principal, interest rate and date prior to gift to which interest has been paid. Description of life insurance policies should show the name of the insurer and the number of the policy. A supplemental statement, Form 938, must be filed for every life insurance policy. (See article 26.) In describing an annuity, the name and address of the issuing company should be given, or if payable out of a trust or other fund such a description as will fully identify such trust or fund. If the annuity is payable for a term of years, the duration of the term and the date on which it began should be given, and if payable for the life of any person, the

date of birth of such person should be stated. Judgments should be described by giving the title of the cause and the name of the court in which rendered, date of judgment, name and address of judgment debtor, amount of judgment, rate of interest to which subject, whether any payments have been made thereon, and, if so, when and in what amounts.

SEC. 508. RECORDS AND SPECIAL RETURNS.

(a) **By donor.**—Every person liable to any tax imposed by this title or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) **To determine liability to tax.**—Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records, as the Commissioner deems sufficient to show whether or not such person is liable to tax under this title.

ART. 25. Aids to determination and collection of tax.—In assessing and collecting gift taxes, the Commissioner has the benefit of all existing internal revenue laws in so far as such laws are applicable. (See section 529.) The Commissioner may require any person to keep specific records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may prescribe in order that he may determine whether such person is liable for the tax. In accordance with this provision, every individual shall, for the purpose of determining the total amount of his gifts, keep such permanent books of account or records as are necessary to establish the amount of his total gifts (limited as provided in section 504 (b)), together with the deductions allowable in determining the amount of his net gifts, and the other information required to be shown in a gift tax return.

ART. 26. Supplemental data.—In order that the Commissioner may determine the correct tax the donor shall furnish such supplemental data as may be deemed necessary by the Commissioner. It is, therefore, the duty of the donor to furnish upon request copies of all documents relating to his gift or gifts, appraisal lists of any items included in the total amount of gifts, copies of balance sheets, or other financial statements relating to the value of stock constituting the gift, and any other information obtainable by him that may be found necessary in the determination of the tax. (See article 19.) For every policy of life insurance listed on the return, the donor must procure a statement from the insurance company on Form 938, in accordance with instructions printed thereon, and file it with the collector who receives the return. If specifically requested by the Com-

missioner, the insurance company shall file this statement direct with the Bureau.

ART. 27. Returns confidential.—All gift tax returns are treated as confidential and may not be divulged to any person other than the donor or his duly authorized agent, except as provided in rules and regulations separately promulgated. This confidential treatment extends to records in possession of the Bureau, whether on file with the Commissioner, collector, or revenue agent, including information of a private nature submitted or obtained in connection with a return. Internal revenue officers are not prohibited from disclosing the returned amount of any gift or the amount of any specific deduction, if such disclosure is necessary in order to arrive at a correct determination of the tax. This right of disclosure, however, does not extend to such information as the total amount of the gifts, the amount of the tax, or other general data.

ART. 28. Recognition of attorneys and other persons representing taxpayers.—For regulations governing the recognition of attorneys, agents, and other persons representing claimants before the Treasury Department, reference should be made to Treasury Department Circular No. 230, as revised, copies of which may be obtained upon application to the secretary of the Committee on Enrollment and Disbarment, Treasury Department, Washington, D. C.

If an attorney or other person asks a ruling on a question of law arising in a specific case, the Commissioner will require satisfactory evidence of the right to obtain such ruling. Hypothetical questions, however, can not be answered.

ART. 29. No return filed, or a false or fraudulent return filed.—Section 3176, Revised Statutes, as amended by section 619 (d), Revenue Act of 1928, provides:

If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner of Internal Revenue may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be *prima facie* good and sufficient for all legal purposes. * * *

If a tax is found to be due upon such a return, the donor shall be liable for penalties as well as for the tax. For penalties, see sections 519, 520, and 525 and articles 52, 53, and 58.

SEC. 509. PAYMENT OF TAX.

(a) **Time of payment.**—The tax imposed by this title shall be paid by the donor on or before the 15th day of March following the close of the calendar year.

(b) **Extension of time for payment.**—At the request of the donor, the Commissioner may extend the time for payment of the amount determined as the tax by the donor, for a period not to exceed six months from the date prescribed for the payment of the tax. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

(c) **Voluntary advance payment.**—A tax imposed by this title, may be paid, at the election of the donor, prior to the date prescribed for its payment.

(d) **Fractional parts of cent.**—In the payment of any tax under this title a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(e) **Receipts.**—The collector to whom any payment of any gift tax is made shall, upon request, grant to the person making such payment a receipt therefor.

ART. 30. Date of payment.—The tax is required to be paid by the donor on or before the 15th day of March following the close of the calendar year in which the gifts were made, unless an extension of time for payment thereof has been granted by the Commissioner. (See article 31.)

ART. 31. Extension of time for payment of tax shown on return.—If it is shown to the satisfaction of the Commissioner that the payment of the amount determined as the tax by the donor, or any part thereof, upon the due date will result in undue hardship to the donor, the Commissioner, at the request of the donor, may grant an extension of time for the payment for a period not to exceed six months. The extension will not be granted upon a general statement of hardship. The term “undue hardship” means more than an inconvenience to the donor. It must appear that substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the donor from making payment of the amount at the due date. If a market exists, the sale of property at the current market price is not ordinarily considered as resulting in undue hardship. An application for an extension of time for the payment of such tax should be made under oath and must be accompanied or supported by evidence showing the undue hardship that would result to the donor if the extension were refused. A sworn statement of assets and liabilities of the donor is required and should accompany the application. An itemized statement showing all receipts and disbursements for each of the three months preceding the due date of the tax shall also be submitted. The application with the evidence must be filed with the collector, who will at once transmit it to the Commissioner with his recommendations as to the extension. The Commissioner will not consider an

application for an extension of time unless such application is made on or before the due date of the tax for which the extension is desired.

As a condition to the granting of such an extension, the Commissioner may require the donor to furnish a bond in an amount not exceeding double the amount of the tax. If a bond is required, it must be filed with the collector within 10 days after notification by the Commissioner that such bond is required. The bond, if required, shall be conditioned upon the payment of the tax and interest assessed in connection therewith in accordance with the terms of the extension granted, and shall be executed by a surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety upon Federal bonds and shall be subject to the approval of the Commissioner. In lieu of such surety, the bond may be secured by the deposit of Liberty bonds, other bonds or notes of the United States, any public debt obligations of the United States, or any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, equal in their total par value to the amount of such bond. (See section 1126 of the Revenue Act of 1926, as amended by section 7 of H. R. 4304, Public, No. 3, Seventy-fourth Congress.)

If an extension of time for payment of the tax is granted, the amount, time for payment of which is so extended, shall be paid on or before the expiration of the period of extension, together with interest at the rate of 6 per cent per annum on such amount from the date when the payment should have been made if no extension had been granted until the expiration of the period of the extension. (See section 521 and article 54.)

ART. 32. Voluntary advance payment.—The gift tax may be paid at the election of the donor prior to the date prescribed for its payment, that is, prior to the 15th day of March following the close of the calendar year in which the gift or gifts were made. No discount will be allowed for payment in advance of the due date.

ART. 33. When fractional part of cent may be disregarded.—In the payment of tax a fractional part of a cent shall be disregarded, unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. A fractional part of a cent should not be disregarded in the computation of the tax.

ART. 34. Receipts for taxes.—Upon request the collector will give a receipt for tax payments. In the case of payments made by check or money order, the canceled check or the money order receipt is usually a sufficient receipt. In case of payments in cash, however, it might be to the donor's interest to require the collector to furnish a receipt.

ART. 35. Payment by check.—Collectors may accept uncertified checks in the payment of the tax, provided such checks are collect-

ible at par—that is, for the full amount without any deduction for exchange or other charges. The day on which the check is received will be considered the date of payment so far as the taxpayer is concerned, unless the check is uncollectible.

All expenses incident to the attempt to collect unhonored checks and their return through the depositary bank must be paid by the drawer of the check to the bank on which it is drawn. (See section 3210 of the Revised Statutes, as amended, reenacted by section 1128 (b) of the Revenue Act of 1926.) If a check has been returned uncollected by the depositary bank, the collector should proceed to collect the tax as though no check had been given, and the taxpayer will remain liable for payment of the tax and for all interest, legal penalties, and additions, if any attach, to the same extent as though such check had not been tendered. A taxpayer who tenders a certified check in payment of taxes is not released from his obligation until the check has been paid. (See Act of March 2, 1911 (36 Stat., 965).)

ART. 36. Donor liable for tax.—The statute provides that the donor shall pay the tax. If the donor dies before the tax is paid, his executor or administrator shall make payment thereof to the collector. If there is no duly qualified executor or administrator, the heirs, legatees, devisees, and distributees are liable for and required to pay the tax to the extent of the value of their inheritance, bequest, devise, or distributive share of the donor's estate. As to the personal liability of the donee, see article 37, and as to that of the executor or administrator, see article 72.

SEC. 510. LIEN FOR TAX.

The tax imposed by this title shall be a lien upon all gifts made during the calendar year, for ten years from the time the gifts are made. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. Any part of the property comprised in the gift sold by the donee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien herein imposed and the lien, to the extent of the value of such gift, shall attach to all the property of the donee (including after-acquired property) except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth. If the Commissioner is satisfied that the tax liability has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all of the property from the lien herein imposed.

ART. 37. Lien for tax.—A lien attaches upon all gifts made during the calendar year for the amount of the tax imposed upon the gifts made during such year. The lien extends for a period of 10 years from the time the gifts were made, unless the tax is sooner paid. If the tax is not paid when due, the donee of any gift becomes personally liable for the tax to the extent of the value of his gift. Any part

of property which was the subject of a gift, sold by the donee to a bona fide purchaser for an adequate and full consideration in money or money's worth, is divested of the lien, but a like lien to the extent of the value of such gift attaches to all the property of the donee, including after-acquired property, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

ART. 38. Release of lien.—The statute provides that, if the Commissioner is satisfied that the tax liability has been fully discharged or provided for, he may issue his certificate releasing any or all property from the lien imposed thereon. The issuance of certificates releasing such lien is a matter resting within the discretion of the Commissioner, and certificates will be issued only in case there is actual need therefor. The primary purpose of such release is not to evidence payment or satisfaction of the tax but to permit transfer of property free from the lien in case it is necessary to clear title. Receipts for payment of tax are issued by the collector. (See article 34.)

If the tax liability has been fully discharged, or its discharge provided for to the satisfaction of the Commissioner by the applicant for the release of lien filing with the collector a surety bond, a certificate may then be issued releasing any or all property from the lien imposed thereon. The tax will be considered fully discharged only when the return has been examined and payment of the tax, including any deficiency determined to be due, has been made. If the tax liability has not been fully discharged, or provided for as above stated, no general release will be granted, but certificates releasing the lien on particular items of property may be issued by the Commissioner, who may require as a prerequisite, in such amount as he may designate, a partial payment of the tax, or a surety bond. As to the character of surety bonds required, see article 31. In lieu of a surety bond, the taxpayer may file a bond secured by the deposit of Liberty bonds, other bonds or notes of the United States, any public-debt obligations of the United States, or any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, equal in their total par value to the amount of such bond. (See section 1126 of the Revenue Act of 1926, as amended by section 7 of H. R. 4304, Public, No. 3, Seventy-fourth Congress.)

The application for a release should be filed with the Commissioner, should explain the circumstances that require the release, and should fully describe the particular items for which the release is desired. If the application is made prior to the filing of the return for gift tax, an affidavit may be required showing the value of the property to be released from the lien, the basis for such valuation, the total amount of gifts made during the calendar year and the prior cal-

endar years subsequent to the enactment of the Revenue Act of 1932, the approximate value of all real estate upon which the lien has attached, and, in case the property is to be sold or otherwise transferred, the name and address of the purchaser or transferee and the consideration, if any, paid or to be paid by him.

SEC. 511. EXAMINATION OF RETURN AND DETERMINATION OF TAX.

As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax.

ART. 39. Examination of return and determination of tax by the Commissioner.—As soon as practicable after returns are filed, they will be examined and the amount of tax determined under such procedure as may be prescribed from time to time by the Commissioner. (See section 513 and article 41.)

SEC. 512. DEFINITION OF DEFICIENCY.

As used in this title in respect of the tax imposed by this title the term "deficiency" means—

(1) The amount by which the tax imposed by this title exceeds the amount shown as the tax by the donor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the donor upon his return, or if no return is made by the donor, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax.

ART. 40. Deficiency defined.—Section 512, by its definition of the word "deficiency," provides a term which will apply to any amount of tax determined to be due in excess of the amount of tax reported by the donor upon his return; or in excess of the amount reported by the donor after adjustment made for prior assessments, abatements, credits, refunds, or collections without assessment. In defining the term "deficiency" section 512 recognizes two classes of cases—one, where the taxpayer makes a return showing some tax liability; the other, where the taxpayer makes a return showing no tax liability, or where the taxpayer fails to make a return. Additional tax shown on any so-called "amended return" is a deficiency within the meaning of the Act.

When a donor's tax liability is considered for the first time, the deficiency is the excess of the amount determined to be the correct amount of tax over the amount shown as the tax by the donor on his return, or, if no tax was reported by the donor, the deficiency is the amount determined to be the correct amount of tax. Subsequent information sometimes discloses that the amount previously deter-

mined to be the correct amount of tax is less than the correct amount, and that a redetermination of the tax is necessary. In such a case, the deficiency on redetermination is the excess of the amount determined to be the correct amount of tax over the sum of the amount of tax reported by the donor and the deficiency assessed in connection with the previous determination. If it is a case where no tax was reported by the donor, the deficiency is the excess of the amount determined to be the correct amount of tax over the amount of deficiency assessed in connection with the previous determination. If the previous determination resulted in a credit or refund to the taxpayer, the deficiency upon the second determination is the excess of the amount determined to be the correct amount of tax over the amount of tax reported by the donor decreased by the amount of the credit or refund.

SEC. 513. ASSESSMENT AND COLLECTION OF DEFICIENCIES.

(a) **Petition to Board of Tax Appeals.**—If the Commissioner determines that there is a deficiency in respect to the tax imposed by this title, the Commissioner is authorized to send notice of such deficiency to the donor by registered mail. Within 60 days after such notice is mailed (not counting Sunday as the sixtieth day), the donor may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this title and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the donor, nor until the expiration of such 60-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3224 of the Revised Statutes the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

For exceptions to the restrictions imposed by this subsection see—

(1) Subsection (d) of this section, relating to waivers by the donor;

(2) Subsection (f) of this section, relating to notifications of mathematical errors appearing upon the face of the return;

(3) Section 514, relating to jeopardy assessments;

(4) Section 516, relating to bankruptcy and receiverships; and

(5) Section 1001 of the Revenue Act of 1926, as amended, relating to assessment or collection of the amount of the deficiency determined by the Board pending court review.

(b) **Collection of deficiency found by Board.**—If the donor files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the decision of the Board which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

(c) **Failure to file petition.**—If the donor does not file a petition with the Board within the time prescribed in subsection (a) the

deficiency, notice of which has been mailed to the donor, shall be assessed, and shall be paid upon notice and demand from the collector.

(d) **Waiver of restrictions.**—The donor shall at any time have the right, by a signed notice in writing filed with the Commissioner, to waive the restrictions provided in subsection (a) on the assessment and collection of the whole or any part of the deficiency.

(e) **Increase of deficiency after notice mailed.**—The Board shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the donor, and to determine whether any additional amount or addition to the tax should be assessed, if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) **Further deficiency letters restricted.**—If the Commissioner has mailed to the donor notice of a deficiency as provided in subsection (a) of this section, and the donor files a petition with the Board within the time prescribed in such subsection, the Commissioner shall have no right to determine any additional deficiency in respect of the same calendar year, except in the case of fraud, and except as provided in subsection (e) of this section, relating to assertion of greater deficiency before the Board, or in section 514 (c), relating to the making of jeopardy assessments. If the donor is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered (for the purposes of this subsection, or of subsection (a) of this section, prohibiting assessment and collection until notice of deficiency has been mailed, or of section 528 (c), prohibiting credits or refunds after petition to the Board of Tax Appeals) as a notice of a deficiency, and the donor shall have no right to file a petition with the Board based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a) of this section.

(g) **Jurisdiction over other calendar years.**—The Board in redetermining a deficiency in respect of any calendar year shall consider such facts with relation to the taxes for other calendar years as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other calendar year has been overpaid or underpaid.

(h) **Final decisions of Board.**—For the purposes of this title the date on which a decision of the Board becomes final shall be determined according to the provisions of section 1005 of the Revenue Act of 1926.

(i) **Extension of time for payment of deficiencies.**—Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the donor the Commissioner, with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax), may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of eighteen months, and, in exceptional cases, for a further period not in excess of twelve months. If an extension is granted, the Commissioner may require the donor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties, as the Commissioner deems necessary, condi-

tioned upon the payment of the deficiency in accordance with the terms of the extension.

(j) **Address for notice of deficiency.**—In the absence of notice to the Commissioner under section 527 (a) of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by this title, if mailed to the donor at his last known address, shall be sufficient for the purposes of this title even if such donor is deceased, or is under a legal disability.

SEC. 501, REVENUE ACT OF 1934. PERIOD FOR PETITION TO BOARD UNDER PRIOR ACTS.

Section 274 (a) of the Revenue Act of 1926, section 308 (a) of the Revenue Act of 1926, section 513 (a) of the Revenue Act of 1932, and section 272 (a) of the Revenue Act of 1928 and the Revenue Act of 1932 (relating to the period during which a taxpayer may petition the Board of Tax Appeals for redetermination of a deficiency), are amended by striking out "60 days" and inserting in lieu thereof "90 days"; by striking out "not counting Sunday as the sixtieth day" and inserting in lieu thereof "not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day"; and by striking out "60-day" and inserting in lieu thereof "90-day". The amendments made by this section shall apply only in respect of notices mailed after 30 days after the date of the enactment of this Act.

ART. 41. Assessment of deficiency.—If the Commissioner determines that there is a deficiency in respect of the tax he is authorized to notify the donor of the deficiency by registered mail. In the absence of notice to the Commissioner under section 527 (a) of the existence of a fiduciary relationship the Commissioner is authorized to mail the notice of a deficiency to the donor at his last known address, and such notice is sufficient even if the donor is deceased or is under legal disability. Within 90 days after the notice of deficiency is mailed, a petition may be filed with the Board of Tax Appeals for a redetermination of the deficiency. In determining such 90-day period, Sunday or a legal holiday in the District of Columbia is not to be counted as the ninetieth day. Except as stated in paragraphs numbered (1), (2), (3), (4), and (5) of this article, no assessment of deficiency in respect of the tax shall be made until such notice has been mailed to the donor, nor until the expiration of such 90-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. As to the date on which a decision of the Board of Tax Appeals becomes final, see section 1005 of the Revenue Act of 1926 and section 1101 of the Revenue Act of 1932. If notice of the deficiency was mailed prior to 30 days after the date of the enactment of the Revenue Act of 1934, the period for the filing of a petition with the Board was 60 days (not counting Sunday as the sixtieth day) after the mailing of the notice.

(1) The donor may, at any time, by a signed notice in writing filed with the Commissioner, waive the restrictions on the assessment

of the whole or any part of the deficiency. The notice must in all cases be filed with the Commissioner. The filing of such notice with the Board does not constitute filing with the Commissioner within the meaning of the Act. After such waiver has been acted upon by the Commissioner and the assessment has been made in accordance with its terms, the waiver can not be withdrawn. After a waiver of the restrictions on the assessment of the deficiency has been filed, there will be assessed at the same time as the assessment made in accordance with the terms of the waiver interest upon the tax so assessed at the rate of 6 per cent per annum from the due date of the tax to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed, whichever is the earlier. (See section 522 and article 55.)

(2) If a donor is notified of an additional amount of tax due on account of a mathematical error appearing upon the face of his return, such notice is not to be considered as a notice of deficiency and the donor has no right to file a petition with the Board upon the basis of such notice, nor is the assessment of such additional tax prohibited by the provisions of section 513 (a).

(3) If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, such deficiency shall be assessed immediately as provided in section 514. (See article 45.)

(4) Upon the adjudication of bankruptcy of a donor in any bankruptcy proceeding or the appointment of a receiver for a donor in any receivership proceedings before any court of the United States or of any State or Territory or of the District of Columbia, any deficiency determined by the Commissioner in respect of the tax shall be assessed immediately irrespective of the provisions of section 513 (a) if such deficiency has not been assessed in accordance with the law prior to the adjudication of bankruptcy or the appointment of the receiver. (See sections 516 and 524 (b) (5) and articles 47 and 57.)

(5) If the Board renders a decision and determines that there is a deficiency, and, if the donor duly files a petition for review of the decision by a circuit court of appeals (or the Court of Appeals of the District of Columbia), the filing of the petition will not operate as a stay of the assessment of any portion of the deficiency determined by the Board, unless he has filed a bond with the Board as provided in section 1001 (c) of the Revenue Act of 1926, as amended by section 603 of the Revenue Act of 1928. If, in such a case, the necessary bond has not been filed by the donor, the amount determined by the Board as a deficiency will be assessed immediately after the filing of such petition. If the Commissioner files a petition for review and the donor has not filed a petition for review within three months after the decision of the Board is

rendered, the amount determined by the Board as a deficiency will be assessed immediately after the expiration of the 3-month period. If the Commissioner files a petition for review, and a similar petition is filed by the donor, but the bond required by section 1001 (c) of the Revenue Act, amended as above referred to, has not been filed with the Board, the deficiency will be assessed immediately after the filing of the petition for review by the donor.

If no petition is filed with the Board within the period prescribed, the Commissioner shall assess the amount determined by him as the deficiency and of which he has notified the donor by registered mail. In such case, the Commissioner will not be precluded from determining a further deficiency and notifying the donor thereof by registered mail. In case a petition is filed with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed by the Commissioner. If the Commissioner mails to the donor notice of a deficiency and the donor files a petition with the Board within the period prescribed, the Commissioner is barred from determining any additional deficiency for the same taxable year except in the case of fraud and except as provided in section 513 (e), relating to the assertion of greater deficiencies before the Board, or in section 514, relating to jeopardy assessments. (See article 45.)

ART. 42. Waiver by donor of restrictions on assessment.—If the donor acquiesces in any proposed, tentative, or final determination of the whole or any part of the deficiency, the donor has the right by a signed notice in writing filed with the Commissioner to waive the restrictions on the assessment and collection of such whole or part of the deficiency under the provisions of section 513 (d) above quoted. A form of notice of such waiver for filing with the Commissioner will be supplied the donor upon notice of any proposed, tentative, or final determination of a deficiency. Filing of the notice of waiver will expedite assessment and stop the accrual of interest on the amount assessed until after notice and demand by the collector. As to interest on deficiencies, see section 522 and article 55.

ART. 43. Collection of deficiency.—If a deficiency as redetermined by a decision of the Board which has become final is assessed, or the donor has not filed a petition with the Board and the deficiency as determined by the Commissioner has been assessed, or the restrictions upon the assessment and collection of the whole or any part of the deficiency provided in subsection (a) of section 513 have been waived and an assessment made in accordance with such waiver, the amount so assessed shall be paid upon notice and demand from the collector. As to deficiencies coming within the provisions of sections 514 and 516, and section 1001 (c) of the Revenue Act of 1926, as amended by section 603 of the Revenue Act of 1928, relating

to jeopardy assessments, bankruptcies and receiverships, and deficiencies determined by the Board pending court review, see articles 45, 47, and subparagraph (5) of article 41. As to interest on deficiencies, see section 522 and article 55.

ART. 44. Extension of time for payment of deficiencies.—If it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for payment thereof would result in undue hardship to the donor, the Commissioner, with the approval of the Secretary, may grant an extension of time for the payment of the deficiency or any part thereof for a period of time not in excess of 18 months and in exceptional cases for a further period not in excess of 12 months. The extension will not be granted upon a general statement of hardship. The term “undue hardship” means more than an inconvenience to the donor. It must appear that substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the donor from making payment of the deficiency at the date prescribed for payment. If a market exists, the sale of property at the current market price is not ordinarily considered as resulting in undue hardship. The Act provides that no extension will be granted where the deficiency is due to negligence or intentional disregard of rules and regulations or to fraud with intent to evade tax.

An application for an extension of time for the payment of the deficiency should be made under oath on Form 718 and must be accompanied or supported by evidence showing the undue hardship that would result to the donor if the extension were refused. A sworn statement of assets and liabilities of the donor is required and should accompany the application. An itemized statement showing all receipts and disbursements for each of the three months preceding the date prescribed for payment of the deficiency shall also be submitted. The application with the evidence must be filed with the collector, who will at once transmit it to the Commissioner with his recommendation as to the extension. When it is received by the Commissioner, it will be examined immediately and, if possible, within 30 days will be rejected, approved, or tentatively approved subject to conditions of which the donor will be immediately notified. The Commissioner will not consider an application for an extension of time for the payment of the deficiency unless such application is made on or before the date prescribed for payment thereof as shown by the notice and demand from the collector, or on or before the date prescribed for payment in any prior extension granted.

As a condition to the granting of such an extension the Commissioner may require the donor to furnish a bond on Form 718A in an amount not exceeding double the amount of the deficiency. If a bond is required, it must be filed with the collector within 10 days after

notification by the Commissioner that such bond is required. It shall be conditioned upon the payment of the deficiency, interest, and additional amounts assessed in connection therewith in accordance with the terms of the extension granted and shall be executed by a surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds and shall be subject to the approval of the Commissioner. In lieu of such a bond, the donor may file a bond secured by a deposit of Liberty bonds, other bonds or notes of the United States, any public-debt obligations of the United States, or any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, equal in their total par value to the amount of the bond required to be furnished. (See section 1126 of the Revenue Act of 1926 as amended by section 7 of H. R. 4304, Public, No. 3, Seventy-fourth Congress.) The amount of the deficiency and additions thereto shall be paid on or before the expiration of the period of the extension without the necessity of a notice and demand from the collector. (See section 521 (b) and article 57.)

SEC. 514. JEOPARDY ASSESSMENTS.

(a) **Authority for making.**—If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall immediately assess such deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) and notice and demand shall be made by the collector for the payment thereof.

(b) **Deficiency letters.**—If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 513 (a), then the Commissioner shall mail a notice under such subsection within 60 days after the making of the assessment.

(c) **Amount assessable before decision of Board.**—The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the donor, despite the provisions of section 513 (f) prohibiting the determination of additional deficiencies, and whether or not the donor has theretofore filed a petition with the Board of Tax Appeals. The Commissioner shall notify the Board of the amount of such assessment, if the petition is filed with the Board before the making of the assessment or is subsequently filed, and the Board shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) **Amount assessable after decision of Board.**—If the jeopardy assessment is made after the decision of the Board is rendered such assessment may be made only in respect of the deficiency determined by the Board in its decision.

(e) **Expiration of right to assess.**—A jeopardy assessment may not be made after the decision of the Board has become final or after the donor has filed a petition for review of the decision of the Board.

(f) **Bond to stay collection.**—When a jeopardy assessment has been made the donor, within 10 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by the decision of the Board which has become final, together with interest thereon as provided in section 523 or 524 (b) (4).

(g) **Same—Further conditions.**—If the bond is given before the donor has filed his petition with the Board under section 513 (a), the bond shall contain a further condition that if a petition is not filed within the period provided in such subsection, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subsection.

(h) **Waiver of stay.**—Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The donor shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the donor, be proportionately reduced. If the Board determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Board is rendered the bond shall, at the request of the donor, be proportionately reduced.

(i) **Collection of unpaid amounts.**—When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded as provided in section 528, without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

ART. 45. Jeopardy assessments.—If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he is required to assess such deficiency immediately, together with the interest and other additional amounts provided by law. If a deficiency is assessed on account of jeopardy after the decision of the Board of Tax Appeals is rendered, the jeopardy assessment may be made only with respect to the deficiency determined by the Board. The Commissioner is prohibited from making a jeopardy assessment after a decision of the Board has become final (see section 1005 of

the Revenue Act of 1926) or after the donor has filed a petition for review of the decision of the Board.

If notice of a deficiency was mailed to the donor (see section 513 (a) and article 41) before it was discovered that delay would jeopardize the assessment or collection of the tax, a jeopardy assessment may be made in an amount greater or less than that included in the deficiency notice. On the other hand if the assessment on account of jeopardy was made without mailing the notice required by section 513 (a), as amended by section 501 of the Revenue Act of 1934, the Commissioner must within 60 days after the making of the assessment send the donor notice of the deficiency by registered mail. The donor may file a petition with the Board for a redetermination of the amount of the deficiency within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) after such notice is mailed. If the petition of the donor is filed with the Board, either before or after the making of the jeopardy assessment, the Commissioner is required to notify the Board of such assessment, and the Board has jurisdiction to redetermine the amount of the deficiency together with all other amounts assessed at the same time in connection therewith. (See section 514 (c).)

After a jeopardy assessment has been made, the list showing such assessment will be immediately transmitted to the collector. Upon receipt of the list containing the assessment, the collector is required to send notice and demand to the donor for the amount of the jeopardy assessment. Regardless of whether the donor has filed a petition with the Board, he is required to make payment of the amount of such assessment within 10 days after the sending of notice and demand by the collector, unless before the expiration of such 10-day period he files with the collector a bond on Form 718B of the character hereinafter prescribed. The bond must be in such amount, not exceeding double the amount for which the stay is desired, as the collector deems necessary and must be executed by sureties satisfactory to the collector. In lieu of a surety bond, the taxpayer may file a bond secured by the deposit of Liberty bonds, other bonds or notes of the United States, any public-debt obligations of the United States, or any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, equal in their total par value to the amount of such bond. (See section 1126 of the Revenue Act of 1926, as amended by section 7 of H. R. 4304, Public, No. 3, Seventy-fourth Congress.) The bond must be conditioned upon the payment of so much of the amount, the collection of which is to be stayed by the bond, as is not abated by a decision of the Board which has become final, together with the interest on such amount as may accrue under section 523 and section 524 (b) (4). If the bond is given before the donor has filed his peti-

tion with the Board, it must contain a further condition that if a petition is not filed before the expiration of the 90-day period provided for the filing of such petition, the amount stayed by the bond will be paid upon notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per cent per annum from the date of the jeopardy notice and demand to the date of the notice and demand made after the expiration of the 90-day period. If a petition is not filed with the Board within the 90-day period, the collector will be so advised, and, if collection of the deficiency has been stayed by the filing of a bond within 10 days after the date of jeopardy notice and demand, he should then give notice and make demand for payment of the amount assessed plus interest. Any bond filed after the expiration of 10 days from the date of the jeopardy notice and demand is not such a bond as is contemplated by section 514 (f), although the collector may in his discretion accept the bond and stay collection of the deficiency.

Upon the filing of a bond of the character described within 10 days after the date of notice and demand for payment of the amount assessed, the collection of so much thereof as is covered by the bond will be stayed. The donor may at any time waive the stay of collection of the whole or any part of the amount covered by the bond. If as a result of such waiver any part of the amount covered by the bond is paid, then the bond will at the request of the donor be proportionately reduced.

After the Board has rendered its decision and such decision has become final, the collector will be notified of the action taken. The collector will then send notice and demand for the unpaid portion of the amount determined by the Board, the collection of which has been stayed by the bond. The collector is required to include in the notice and demand for the unpaid portion, interest at the rate of 6 per cent per annum from the date of the jeopardy notice and demand to the date of the notice and demand referred to in this paragraph. If the amount of the jeopardy assessment is less than the amount determined by the Board, the difference, together with interest as provided in section 522, will be assessed, and collected as part of the tax upon notice and demand from the collector. If the amount included in the notice and demand made after the decision of the Board is not paid within 10 days after such notice and demand, there shall be collected as part of the tax, interest as provided in article 57. If the amount of the jeopardy assessment is in excess of the amount determined by the Board, the unpaid portion of such excess will be abated. If any part of the excess amount has been paid, it will be credited or refunded to the donor as provided in section 528. (See articles 62-65.)

As to bankruptcy and receivership cases, see sections 516 and 524 (b) (5) and articles 47 and 57.

SEC. 515. CLAIMS IN ABATEMENT.

No claim in abatement shall be filed in respect of any assessment in respect of any tax imposed by this title.

ART. 46. Claims in abatement.—Section 515 prohibits the filing of claims for abatement by donors in respect of any assessment of gift tax imposed by Title III of the Revenue Act of 1932. This provision does not prohibit the filing of claims in abatement by collectors. (See also articles 62–64.)

SEC. 516. BANKRUPTCY AND RECEIVERSHIPS.

(a) **Immediate assessment.**—Upon the adjudication of bankruptcy of any donor in any bankruptcy proceeding or the appointment of a receiver for any donor in any receivership proceeding before any court of the United States or of any State or Territory or of the District of Columbia, any deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) determined by the Commissioner in respect of a tax imposed by this title upon such donor shall, despite the restrictions imposed by section 513 (a) upon assessments be immediately assessed if such deficiency has not theretofore been assessed in accordance with law. Claims for the deficiency and such interest, additional amounts and additions to the tax may be presented, for adjudication in accordance with law, to the court before which the bankruptcy or receivership proceeding is pending, despite the pendency of proceedings for the redetermination of the deficiency in pursuance of a petition to the Board; but no petition for any such redetermination shall be filed with the Board after the adjudication of bankruptcy or the appointment of the receiver.

(b) **Unpaid claims.**—Any portion of the claim allowed in such bankruptcy or receivership proceeding which is unpaid shall be paid by the donor upon notice and demand from the collector after the termination of such proceeding, and may be collected by distraint or proceeding in court within six years after termination of such proceeding. Extensions of time for such payment may be had in the same manner and subject to the same provisions and limitations as are provided in sections 513 (i), 521 (b), and 524 (b) (3) in the case of a deficiency in a tax imposed by this title.

ART. 47. Bankruptcy, proceedings for relief of debtors, and receiverships.—During bankruptcy proceedings, or proceedings for the relief of debtors in Federal courts under sections 74, 77, and 77B of the National Bankruptcy Act of 1898, as amended, or during equity receivership proceedings in either Federal or State courts, the court which makes the adjudication of bankruptcy, or which approves a debtor's petition or answer in a proceeding for relief of debtors, or which appoints a receiver for any donor, has control over the assets of such donor, and the collection of taxes due can not be made by distraining upon such assets while the bankruptcy, debtor, or receivership proceeding is pending. However, assets of a farmer who has filed a petition in a proceeding for relief of debtors under section 75

of the National Bankruptcy Act, as amended, and assets acquired by a bankrupt or debtor in a proceeding for the relief of debtors, subsequent to the adjudication or the approval of the debtor's petition or answer in a proceeding for the relief of debtors, which are not in control of the bankruptcy court may be subject to distraint.

Collectors should, promptly after notice of outstanding liabilities against the donor in bankruptcy, or in proceedings for the relief of debtors, or in receivership, file claim in the appropriate court whether unpaid taxes involved have been assessed or not, except in cases where departmental instructions direct otherwise; for example, where taxes of the bankrupt, debtor, or insolvent donor are secured by sufficient bond.

Under section 3466 and section 3467, as amended, of the Revised Statutes and section 64 (a) of the National Bankruptcy Act, as amended, taxes take priority over claims of general creditors in cases of bankruptcy, receivership, proceedings for the relief of debtors, and insolvency, and the trustee, receiver, person in control of the assets of the debtor, or assignee may be held personally liable for failure on his part to protect the priority of the government respecting taxes of which he has notice. Bankruptcy courts have jurisdiction under the National Bankruptcy Act, as amended, to determine all disputes regarding the amount and validity of taxes of a bankrupt or of a debtor in proceedings for the relief of debtors. Bankruptcy proceedings, proceedings for the relief of debtors, and receivership proceedings do not foreclose or discharge any portion of the claim of the United States for taxes which have been allowed by the court having jurisdiction over the same and which remain unsatisfied after termination of the bankruptcy, debtor, or receivership proceeding.

ART. 48. Immediate assessments in bankruptcy, proceedings for the relief of debtors, and receivership cases.—If the Commissioner has determined that a deficiency is due in respect of gift tax and the donor has filed a petition with the Board of Tax Appeals prior to the adjudication of bankruptcy, or the filing of a debtor's petition or answer for relief in a debtor proceeding in a Federal court under sections 74, 75, and 77 of the National Bankruptcy Act, as amended, or the approval of the debtor's petition or answer in a debtor's proceeding under section 77B of the National Bankruptcy Act, as amended, or the appointment of a receiver, the trustee or receiver appointed by the court or the person designated by order of the court as in control of the assets of the debtor, may prosecute the donor's appeal before the Board as to that particular determination. In no case shall the petition be filed with the Board for a redetermination of the deficiency after the adjudication of bankruptcy, the filing of a debtor's petition or answer in a Federal court in proceedings for the relief of debtors under sections 74, 75, and 77 of the National Bankruptcy

Act, as amended, the approval of the debtor's petition or answer in a debtor proceeding under section 77B of the National Bankruptcy Act, as amended, or the appointment of a receiver.

Claim for the amount of a deficiency, even though pending before the Board for consideration, may be filed with a bankruptcy or equity court without awaiting final decision of the Board. In case of final decision of the Board before determination of the bankruptcy, debtor, or receivership proceeding, a copy of the Board's decision may be filed by the Commissioner with the bankruptcy or equity court.

While the Commissioner is required by section 516 to make immediate assessment of any deficiency, such assessment is not a jeopardy assessment within the meaning of section 514, and consequently the provisions of that section do not apply to any assessment made under section 516. Therefore, the notice of the deficiency provided for in section 514 (b) will not be mailed. Although such notice will not be issued, nevertheless a letter will be sent to the donor, or to the trustee or receiver in the bankruptcy proceeding, the person designated by order of the court as in control of the assets of the debtor in the proceeding for the relief of debtors, or receiver in the receivership proceedings, notifying him in detail how the deficiency was computed, that the deficiency was assessed under the provisions of section 516, that he may furnish evidence showing wherein the assessment is incorrect, and that upon request he will be granted a hearing with respect to such assessment. If after such evidence is submitted and hearing held any adjustment appears necessary in the assessment, appropriate action will be taken looking to the submission of an amended claim in bankruptcy or receivership or in proceedings for the relief of debtors. A copy of the notification letter will be attached to the assessment list as the collector's authority for filing claim in a bankruptcy, debtor, or receivership proceeding for the amount represented by the assessment, plus interest at the rate of 6 per cent per annum for the period from the date of filing claim by the collector to the date of termination of the bankruptcy, debtor, or receivership proceeding, or to the date of payment if payment is made in full prior to such termination. At the same time the claim is filed with a bankruptcy or receivership court, the collector will send notice and demand for payment to the donor, together with a copy of such claim.

If any portion of the claim allowed by the court in a bankruptcy or a receivership proceeding or proceeding for the relief of debtors remains unpaid after the termination of such proceeding, the collector will send notice and demand for payment thereof to the donor. Such unpaid portion with interest as provided in article 57 may be collected from the donor by distraint or proceeding in court within six years after the termination of a bankruptcy, debtor, or receivership

proceeding. Extensions of time for the payment of such unpaid amount may be granted in the same manner and subject to the same provisions and limitations as provided in the case of a deficiency. (See article 44.)

This article deals only with immediate assessments provided for in section 516 and the procedure in connection with such assessments.

SEC. 517. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION.

(a) **General rule.**—Except as provided in subsection (b), the amount of taxes imposed by this title shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of three years after the return was filed.

(b) **Exceptions—**

(1) **FALSE RETURN OR NO RETURN.**—In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(2) **COLLECTION AFTER ASSESSMENT.**—Where the assessment of any tax imposed by this title has been made within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the donor.

ART. 49. Period of limitation upon assessment of tax.—The amount of the tax must be assessed within three years after the return was filed. Exceptions to this period of limitation are as follows:

(1) In case of a false or fraudulent return with intent to evade tax, the tax may be assessed at any time after such false or fraudulent return is filed.

(2) In the event the donor fails to file a return, the amount of tax due may be assessed at any time after the date prescribed for filing the return. See section 518 and article 51 for provisions relating to the suspension of the running of the statute of limitations on the making of assessments.

With respect to the period of limitation for assessing the amount of the liability of a transferee of property of a donor, or for assessing the amount of the liability of a fiduciary under section 3467 of the Revised Statutes, see section 526 and article 60.

ART. 50. Period of limitation upon collection of tax.—A proceeding in court without assessment for the collection of the tax must be begun within three years after the return was filed, except that if the donor files a false or fraudulent return with intent to evade tax or fails to file a return, a proceeding in court for the collection of the tax may be begun at any time.

In any case in which the tax has been assessed within the statutory period of limitation properly applicable thereto, a proceeding in court or distraint for the collection of such tax may be begun within six years after the assessment thereof, or prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the donor. In determining the running of the statute of limitations in respect of distraint, the distraint shall be considered to have been begun, in the case of personal property, on the date on which the levy upon such property is made, or, in the case of real property, on the date on which notice of the time and place of sale is given to the person whose property it is proposed to sell.

See section 518 and article 51 for provisions relating to the suspension of the running of the statute of limitations on the beginning of distraint or a proceeding in court for collection of the tax.

SEC. 518. SUSPENSION OF RUNNING OF STATUTE.

The running of the statute of limitations provided in section 517 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under section 513 (a)) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

ART. 51. Suspension of running of statute of limitations.—If a notice of a deficiency has been mailed to the donor under the provisions of section 513 (a), as amended by section 501 of the Revenue Act of 1934 (see article 41), then the running of the statute of limitations on assessment, the beginning of distraint after assessment, or on the beginning of a proceeding in court after assessment or without assessment, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

SEC. 519. ADDITIONS TO THE TAX IN CASE OF FAILURE TO FILE RETURN.

In case of any failure to make and file a return required by this title, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, 25 per centum of the tax shall be added to the tax, except that when a return is filed after such time and it is shown that the failure to file it was due to reasonable cause and not due to willful neglect no such addition shall be made to the tax. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax. The amount added to the tax

under this section shall be in lieu of the 25 per centum addition to the tax provided in section 3176 of the Revised Statutes, as amended.

SEC. 406, REVENUE ACT OF 1935. FAILURE TO FILE RETURNS.

In the case of a failure to make and file an internal-revenue tax return required by law, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, if the last date so prescribed for filing the return is after the date of the enactment of this Act, if a 25 per centum addition to the tax is prescribed by existing law, then there shall be added to the tax, in lieu of such 25 per centum: 5 per centum if the failure is for not more than 30 days, with an additional 5 per centum for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per centum in the aggregate.

ART. 52. Addition to the tax for failure to file return.—For failure to file the return within the time prescribed, unless it is filed after such time and the failure is shown to have been due to a reasonable cause and not to willful neglect, a percentage of the amount of the tax will be added thereto as follows: (1) In case the last date prescribed for filing the return is after August 30, 1935, 5 per cent will be added if the failure is for 30 days or less, with an additional 5 per cent for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per cent in the aggregate. (2) In case the last date prescribed for filing the return is on or before August 30, 1935, 25 per cent will be added.

Two classes of delinquents are subject to this addition to the tax:

(a) Those who do not file returns and for whom returns are made by a collector or the Commissioner, and

(b) Those who file tardy returns and are unable to show reasonable cause for the delay.

A donor who files a tardy return and wishes to avoid the addition to the tax must make an affirmative showing of all facts alleged as a reasonable cause for failure to file the return on time in the form of an affidavit or affidavits which should be attached to the return. If affidavits are furnished with the return or upon the collector's demand, the collector, unless otherwise directed by the Commissioner, will forward the affidavits with the return, and, if the Commissioner determines that the delinquency was due to a reasonable cause and not to willful neglect, the addition to the tax will not be assessed. If the donor exercised ordinary business care and prudence and was nevertheless unable to file the return in the prescribed time, then the delay is due to reasonable cause.

If the addition to the tax for delinquency in filing the return has been added, the amount so added shall be collected in the same manner as the tax.

For addition to the tax in case of a deficiency due to fraud with intent to evade tax, see section 520 and article 53. As to the making

of returns for donors by collectors or the Commissioner in the case of delinquency in filing a return, or in the case of a false or fraudulent return, see section 3176 of the Revised Statutes, as amended by section 1103 of the Revenue Act of 1926, and by section 619 (d) of the Revenue Act of 1928.

SEC. 520. ADDITIONS TO THE TAX IN CASE OF DEFICIENCY.

(a) **Negligence.**—If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5 per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of section 522, relating to interest on deficiencies, shall not be applicable.

(b) **Fraud.**—If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid, in lieu of the 50 per centum addition to the tax provided in section 3176 of the Revised Statutes, as amended.

ART. 53. Additions to the tax in case of deficiency.—If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations, 5 per cent of the total amount of the deficiency shall be added to the deficiency. If the negligence, or intentional disregard of rules and regulations, was without intent to defraud, the added amount will be assessed, collected, and paid in the same manner as the deficiency, except that such added amount will not be subject to the interest provisions of section 522. (See article 55.)

If any part of the deficiency is due to fraud with intent to evade tax, 50 per cent of the total amount of the deficiency, in addition to the deficiency, will be assessed and collected and should be paid in the same manner as the deficiency. The 50 per cent addition to the tax provided by section 520 (b) is in lieu of the penalty imposed by section 3176 of the Revised Statutes, as amended.

For penalties other than additions to the tax for willful attempts to evade or defeat the tax, see section 525 and article 58.

SEC. 521. INTEREST ON EXTENDED PAYMENTS.

(a) **Tax shown on return.**—If the time for payment of the amount determined as the tax by the donor is extended under the authority of section 509 (b), there shall be collected as a part of such amount, interest thereon at the rate of 6 per centum per annum from the date when such payment should have been made if no extension had been granted, until the expiration of the period of the extension.

(b) **Deficiency.**—In case an extension for the payment of a deficiency is granted, as provided in section 513 (i), there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period.

ART. 54. Interest on extended payments.—In case an extension of time has been granted for paying any portion of the tax shown by

the donor upon his return, the statute requires the imposition of interest upon the amount, the time for payment of which has been extended, at the rate of 6 per cent per annum from the date upon which such payment should have been made (the 15th day of March following the close of the calendar year) to the expiration of the period of the extension.

If an extension of time for paying the deficiency, or any portion thereof, has been granted, section 521 (b) requires the imposition of interest upon the amount, the time for payment of which has been extended, at the rate of 6 per cent per annum for the period of the extension, i. e., from the date prescribed for the payment (10 days after the date of the notice and demand) to the expiration of the period of the extension.

For provisions relating to interest in case the amount, the time for payment of which has been extended, is not paid on or before the expiration of the period of the extension granted, see article 57.

Example: A deficiency in tax amounting to \$500 was determined and assessment thereof made on the 15th day of July, the due date of the tax being March 15 preceding. The amount of the assessment in this instance is \$500, plus interest thereon at 6 per cent per annum from and including March 16 to and including July 15, amounting to \$10.03, computed upon the basis of 365 days to the year (or 366 days in a leap year), or a total assessment of \$510.03, which thereupon becomes the amount of the deficiency. The date of the notice and demand by the collector for payment was August 1 following the assessment. Within 10 days thereafter \$255.02 was paid and request was made for an extension of time for paying the balance of the deficiency (\$255.01), and an extension from August 11 to and including February 11 was granted for the payment thereof. This amount bears interest at 6 per cent per annum for the period of the extension, amounting to \$7.71. The remaining liability is, therefore, \$262.72.

SEC. 522. INTEREST ON DEFICIENCIES.

Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the due date of the tax to the date the deficiency is assessed, or, in the case of a waiver under section 513 (d), to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier.

ART. 55. Interest on deficiencies.—The statute provides that the deficiency shall bear interest at the rate of 6 per cent per annum from the due date of the tax (the 15th day of March following the close of the calendar year) to the date the deficiency is assessed, except in the case of a waiver of the restrictions against the assessment and collection of the deficiency, and that such interest shall be assessed at the same time as the deficiency and shall be collected as part of the

tax. The deficiency in respect to which the restrictions against the assessment and collection are waived under the provisions of section 513 (d) bears interest at the rate of 6 per cent per annum from the due date of the tax to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed, whichever is the earlier. The term "deficiency" as used in this article includes any tax resulting from the correction of a mathematical error appearing upon the face of a return. (See paragraph numbered (2) of article 41.)

For provisions relating to interest upon the deficiency in case an extension of time for payment is granted, see articles 54 and 57. For provisions relating to interest in case of a jeopardy assessment, see article 56.

SEC. 523. INTEREST ON JEOPARDY ASSESSMENTS.

In the case of the amount collected under section 514 (f) there shall be collected at the same time as such amount, and as a part of the tax, interest at the rate of 6 per centum per annum upon such amount from the date of the jeopardy notice and demand to the date of notice and demand under section 514 (i), or, in the case of the amount collected in excess of the amount of the jeopardy assessment, interest as provided in section 522.

ART. 56. Interest on jeopardy assessments.—In case a stay of the collection of a jeopardy assessment of a deficiency tax is obtained in accordance with the provisions of section 514 (f) (see article 45), and a petition for a redetermination of the deficiency is filed with the Board of Tax Appeals, interest accrues on such unpaid portion of the deficiency, if any, determined by a decision of the Board which becomes final, at the rate of 6 per cent per annum from the date of the notice and demand from the collector following the jeopardy assessment to the date of the notice and demand by the collector subsequent to the final action taken on the petition filed with the Board. If the amount determined by the Board as the amount which should have been assessed is greater than the amount actually assessed, the difference bears interest at the rate of 6 per cent per annum from the due date of the tax until the assessment of such difference.

SEC. 524. ADDITIONS TO THE TAX IN CASE OF NONPAYMENT.

(a) Tax shown on return—

(1) PAYMENT NOT EXTENDED.—Where the amount determined by the donor as the tax imposed by this title, or any part of such amount, is not paid on the due date of the tax, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 1 per centum a month from the due date until it is paid.

(2) PAYMENT EXTENDED.—Where an extension of time for payment of the amount so determined as the tax by the donor has been granted, and the amount the time for payment of which has

been extended, and the interest thereon determined under section 521 (a), is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subsection, interest at the rate of 1 per centum a month shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) Deficiency—

(1) **PAYMENT NOT EXTENDED.**—Where a deficiency, or any interest assessed in connection therewith under section 522, or any addition to the tax provided for in section 3176 of the Revised Statutes, is not paid in full within 10 days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 1 per centum a month from the date of such notice and demand until it is paid.

(2) **FILING OF JEOPARDY BOND.**—If a bond is filed, as provided in section 514, the provisions of paragraph (1) of this subsection shall not apply to the amount covered by the bond.

(3) **PAYMENT EXTENDED.**—If the part of the deficiency the time for payment of which is extended as provided in section 513 (i) is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 1 per centum a month for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period.

(4) **JEOPARDY ASSESSMENT—PAYMENT STATED BY BOND.**—If the amount included in the notice and demand from the collector under section 514 (i) is not paid in full within 10 days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 1 per centum a month from the date of such notice and demand until it is paid.

(5) **INTEREST IN CASE OF BANKRUPTCY AND RECEIVERSHIPS.**—If the unpaid portion of the claim allowed in a bankruptcy or receivership proceeding, as provided in section 516, is not paid in full within 10 days from the date of notice and demand from the collector, then there shall be collected as a part of such amount interest upon the unpaid portion thereof at the rate of 1 per centum a month from the date of such notice and demand until payment.

SEC. 404, REVENUE ACT OF 1935. INTEREST ON DELINQUENT TAXES.

Notwithstanding any provision of law to the contrary, interest accruing during any period of time after the date of the enactment of this Act upon any internal-revenue tax (including amounts assessed or collected as a part thereof) or customs duty, not paid when due, shall be at the rate of 6 per centum per annum.

ART. 57. Interest on delinquent taxes.—If any portion of the tax shown on the donor's return is not paid on or before the due date (the 15th day of March following the close of the calendar year) and no extension of time for payment thereof has been granted, such unpaid portion bears interest from the due date until payment is received by the collector at the rate of 6 per cent per annum (except that during

any part of such period of time prior to August 31, 1935, interest accrues at the rate of 1 per cent a month).

If any portion of a deficiency assessed, together with interest and any other amount assessed and collectible as a part thereof, is not paid within 10 days from the date of the notice and demand issued by the collector (except a deficiency with respect to which a jeopardy assessment is made and collection is stayed by the filing of bond), and no extension of time for payment thereof has been granted, such unpaid amount bears interest from the date of the notice and demand until payment is received by the collector at the rate of 6 per cent per annum (except that during any part of such period of time prior to August 31, 1935, interest accrues at the rate of 1 per cent a month).

If an extension of time has been granted for paying any portion of the tax shown on the donor's return (see article 31), or for any portion of a deficiency (see article 44) and the amount due is not paid in full prior to the expiration of the extension, the total unpaid amount (tax and interest for the period of the extension) bears interest from the expiration of the extension until payment is received by the collector at the rate of 6 per cent per annum (except that during any part of such period of time prior to August 31, 1935, interest accrues at the rate of 1 per cent a month).

If a deficiency as determined by a decision of the Board of Tax Appeals which has become final is in the amount of a jeopardy assessment, collection of which was stayed by the filing of a bond and such amount is not paid in full within 10 days after the notice and demand issued subsequent to such final decision, interest accrues on the unpaid amount from the date of such notice and demand until it is paid at the rate of 6 per cent per annum (except that during any part of such period of time prior to August 31, 1935, interest accrues at the rate of 1 per cent a month).

If, in the case of bankruptcy, debtor's relief proceeding, or a receivership for any donor, any portion of the claim for a deficiency (including interest and any other amount assessed and collectible as a part thereof) presented for adjudication in accordance with law is unpaid, the unpaid portion of the claim, if not paid in full within 10 days from notice and demand from the collector, bears interest from the date of such notice and demand until paid at the rate of 6 per cent per annum (except that during any part of such period of time prior to August 31, 1935, interest accrues at the rate of 1 per cent a month).

SEC. 525. PENALTIES.

(a) Any person required under this title to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this

title, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, on conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

ART. 58. Penalties.—Two kinds of penalties are provided for delinquency with respect to duties imposed by the statute:

(1) A specific penalty to be recovered by suit unless previously paid or adjusted by the acceptance of an offer in compromise; and

(2) A penalty of a certain percentage of the tax, to be added to and collected in the same manner as the tax.

In any case where more than one penalty is provided, the Government may assert any one or more thereof.

Any person required by the Gift Tax title to pay any tax, or required by law or regulations made under authority thereof to file any notice or make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of the tax, who willfully fails to pay such tax, file such notice or make such return, keep such records, or supply such information as required by the law and the regulations, shall, in addition to the other penalties, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

Any person who willfully attempts in any manner to evade or defeat any gift tax shall, in addition to other penalties provided by law, be guilty of a felony and, on conviction thereof, shall be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

Any person who willfully aids or assists in the preparation or presentation of a false or fraudulent notice or return, or procures, counsels, or advises the preparation or presentation of such notice or return, whether such falsity or fraud is with or without the knowledge or consent of the person required to make the notice or return, will be guilty of a felony and, upon conviction thereof, fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution. (See section 1114 (c) of the Revenue Act of 1926.)

Any person who, in connection with any compromise entered into or offer made under the provisions of section 3229 of the Revised Statutes, as amended, or who, in connection with any closing agreement under section 606 of the Revenue Act of 1928 (see article 70)

or the offer to enter into any such agreement, willfully conceals from any officer or employee of the United States any property belonging to the estate of the donor or any person liable in respect of the tax, or receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement relating to the estate or financial condition of the donor or other person liable in respect of the tax, shall, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both. (See section 616 of the Revenue Act of 1928.)

For penalties imposed for failure to make and file a return, or for fraud with intent to evade tax, which consist of a percentage of the tax to be added thereto and collected in the same manner as the tax, see sections 519 and 520 and articles 52 and 53.

SEC. 3229, REVISED STATUTES. COMPROMISES.

The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws instead of commencing suit thereon; and, with the advice and consent of the said Secretary and the recommendation of the Attorney-General, he may compromise any such case after a suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of the Commissioner the opinion of the Solicitor of Internal Revenue, or of the officer acting as such, with his reasons therefor, with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise.

ART. 59. Compromises.—Offers in compromise should be filed with the appropriate collector of internal revenue. No offer in compromise of tax, interest, and ad valorem penalty collectible as part of the tax will be accepted unless there is a substantial doubt as to either liability or collectibility. (The functions prescribed for the "Solicitor of Internal Revenue" by section 3229 of the Revised Statutes are now exercised by the "Assistant General Counsel for the Bureau of Internal Revenue." See section 1201 (a) of the Revenue Act of 1926 and section 512 of the Revenue Act of 1934.)

SEC. 526. TRANSFERRED ASSETS.

(a) **Method of collection.**—The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in the tax imposed by this title (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) **TRANSFEREES.**—The liability, at law or in equity, of a transferee of property of a donor, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed by this title.

(2) **FIDUCIARIES.**—The liability of a fiduciary under section 3467 of the Revised Statutes [U. S. C., title 31, sec. 192] in respect of the payment of any such tax from the estate of the donor.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) **Period of limitation.**—The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the donor.

(2) If a court proceeding against the donor for the collection of the tax has been begun within the period provided in paragraph (1),—then within one year after return of execution in such proceeding.

(c) **Period for assessment against donor.**—For the purposes of this section, if the donor is deceased, the period of limitation for assessment against the donor shall be the period that would be in effect had the death not occurred.

(d) **Suspension of running of statute of limitations.**—The running of the statute of limitations upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under section 513 (a) to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

(e) **Prohibition of suits to restrain enforcement of liability of transferee or fiduciary.**—No suit shall be maintained in any court for the purpose of restraining the assessment or collection of (1) the amount of the liability, at law or in equity, of a transferee of property of a donor in respect of any gift tax, or (2) the amount of the liability of a fiduciary under section 3467 of the Revised Statutes [U. S. C., title 31, sec. 192] in respect of any such tax.

(f) **Definition of "transferee".**—As used in this section, the term "transferee" includes donee, heir, legatee, devisee, and distributee.

(g) **Address for notice of liability.**—In the absence of notice to the Commissioner under section 527 (b) of the existence of a fiduciary relationship, notice of liability enforceable under this section in respect of a tax imposed by this title, if mailed to the person subject to the liability at his last known address, shall be sufficient for the purposes of this title even if such person is deceased, or is under a legal disability, or in the case of a corporation, has terminated its existence.

ART. 60. Claims in cases of transferred assets.—The amount for which a transferee of the property of a donor is liable, at law or in equity, and the amount of the personal liability of a fiduciary under section 3467 of the Revised Statutes, as amended by section 518 of the Revenue Act of 1934, in respect of the tax, whether such tax is shown on the return of the donor or determined as a deficiency, shall be assessed against such transferee or such fiduciary, as the case may be, and collected and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in the tax, except as hereinafter provided.

The term "transferee" as used in this article includes among others a donee, heir, legatee, devisee, and distributee.

The period of limitation for assessment of the liability of a transferee or of a fiduciary, is as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the donor.

(2) If a court proceeding against the donor for the collection of the tax has been begun within the period of limitation for the bringing of such proceeding, then within one year after the return of the execution in such proceeding.

For the purpose of determining the period of limitation for assessment against a transferee or a fiduciary, if the donor is deceased, the period of limitation for assessment against the donor shall be the period that would be in effect had the death not occurred.

If a notice of the liability of a transferee or the liability of a fiduciary has been mailed to such transferee or to such fiduciary under the provisions of section 513 (a), as amended by section 501 of the Revenue Act of 1934 (see article 41), then the running of the statute of limitations shall be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

SEC. 527. NOTICE OF FIDUCIARY RELATIONSHIP.

(a) **Fiduciary of donor.**—Upon notice to the Commissioner that any person is acting in a fiduciary capacity such fiduciary shall assume the powers, rights, duties, and privileges of the donor in respect of a tax imposed by this title (except as otherwise specifically provided and except that the tax shall be collected from the estate of the donor), until notice is given that the fiduciary capacity has terminated.

(b) **Fiduciary of transferee.**—Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 526, the fiduciary shall assume, on behalf of such person, the powers, rights, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person), until notice is given that the fiduciary capacity has terminated.

(c) **Manner of notice.**—Notice under subsection (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

ART. 61. Notice of fiduciary relationship.—As soon as the Commissioner receives notice that any person is acting in a fiduciary capacity, such fiduciary must, except as otherwise specifically provided, assume the powers, rights, duties, and privileges of the donor in respect of the tax. If the person is acting as a fiduciary for a transferee or other person subject to the liability specified in section

526 (see article 60), such fiduciary is required to assume the powers, rights, duties, and privileges of the transferee or other person under that section. The amount of the tax or liability is, however, not collectible from the estate of the fiduciary but is collectible from the estate of the donor or from the estate of the transferee or other person subject to the liability specified in section 526. The "notice to the Commissioner" provided for in section 527 shall be a written notice signed by the fiduciary and filed with the Commissioner. The notice must state the name and address of the person for whom the fiduciary is acting and the nature of the liability of such person; that is, whether it is a liability for the tax, and, if so, the year or years involved, or a liability at law or in equity of a transferee of property of the donor, or a liability of a fiduciary under section 3467 of the Revised Statutes, as amended by section 518 of the Revenue Act of 1934, in respect of the payment of any tax from the estate of the donor. Satisfactory evidence of the authority of the fiduciary to act for such person in the fiduciary capacity must be filed with and made a part of the notice. If the fiduciary capacity exists by order of court, a certified copy of the order may be regarded as such satisfactory evidence. When the fiduciary capacity has terminated, the fiduciary, in order to be relieved of any further duty or liability as such, must file with the Commissioner written notice that the fiduciary capacity has terminated as to him, accompanied by satisfactory evidence of the termination of the fiduciary capacity. The notice of termination should state the name and address of the person, if any, who has been substituted as fiduciary.

If the notice of the fiduciary capacity described in the preceding paragraph is not filed with the Commissioner prior to the sending of notice of a deficiency by registered mail to the last known address of the donor (see section 513 (a), as amended by section 501 of the Revenue Act of 1934), or the last known address of the transferee or other person subject to liability (see section 526), no notice of the deficiency will be sent to the fiduciary. In such a case the sending of the notice to the last known address of the donor, transferee, or other person, as the case may be, will be a sufficient compliance with the requirements of the Act, even though such donor, transferee, or other person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence. Under such circumstances if no petition is filed with the Board of Tax Appeals before the expiration of 90 days from the sending of the notice to the donor, transferee, or other person, the tax, or liability under section 526, will be assessed immediately upon the expiration of such 90-day period, and demand for payment will be made by the collector. The term "fiduciary" is defined by section 1111 (a) (6) to mean guardian, trustee, executor, administrator, receiver, con-

servator, or any person acting in any fiduciary capacity for any person.

SEC. 528. REFUNDS AND CREDITS.

(a) **Authorization.**—Where there has been an overpayment of any tax imposed by this title, the amount of such overpayment shall be credited against any gift tax then due from the taxpayer, and any balance shall be refunded immediately to the taxpayer.

(b) **Limitation on allowance**—

(1) **PERIOD OF LIMITATION.**—No such credit or refund shall be allowed or made after three years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer.

(2) **LIMIT ON AMOUNT OF CREDIT OR REFUND.**—The amount of the credit or refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the three years immediately preceding the allowance of the credit or refund.

(c) **Effect of petition to Board.**—If the Commissioner has mailed to the taxpayer a notice of deficiency under section 513(a) and if the taxpayer files a petition with the Board of Tax Appeals within the time prescribed in such subsection, no credit or refund in respect of the tax for the calendar year in respect of which the Commissioner has determined the deficiency shall be allowed or made and no suit by the taxpayer for the recovery of any part of such tax shall be instituted in any court except—

(1) As to overpayments determined by a decision of the Board which has become final; and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the Board which has become final; and

(3) As to any amount collected after the period of limitation upon the beginning of distraint or a proceeding in court for collection has expired; but in any such claim for credit or refund or in any such suit for refund the decision of the Board which has become final, as to whether such period has expired before the notice of deficiency was mailed, shall be conclusive.

(d) **Overpayment found by Board.**—If the Board finds that there is no deficiency and further finds that the taxpayer has made an overpayment of tax in respect of the taxable year in respect of which the Commissioner determined the deficiency, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Board has become final, be credited or refunded to the taxpayer. No such credit or refund shall be made of any portion of the tax paid more than three years before the filing of the claim or the filing of the petition, whichever is earlier.

SEC. 504, REVENUE ACT OF 1934. OVERPAYMENTS FOUND BY THE BOARD OF TAX APPEALS.

* * * * *

(b) The last sentence of section 528(d) of the Revenue Act of 1932 is amended to read as follows: "No such credit or refund shall be made of any portion of the tax unless the Board determines as part of its decision

that it was paid within three years before the filing of the claim or the filing of the petition, whichever is earlier."

* * * * *

(e) The amendments made by subsections (a), (b), (c), and (d) of this section shall have no effect in the case of any proceeding before the Board on a petition if any hearing by the Board thereon has been held prior to 30 days after the date of the enactment of this Act.

ART. 62. Authority for abatement, credit, and refund of tax.—Authority for the credit and refund of any overpayment of the tax is contained in section 528.

Section 515 prohibits the filing of claims for abatement by donors with respect to assessments of the tax. The provisions of section 515 do not impair the authority of the collectors to file claims with the Commissioner for relief from charges against them for uncollectible items, in accordance with section 3218 of the Revised Statutes, as amended, which provides:

SEC. 3218. Every collector shall be charged with the whole amount of taxes, whether contained in lists transmitted to him by the Commissioner of Internal Revenue, or by other collectors, or delivered to him by his predecessor in office, and with the additions thereto, with the par value of all stamps deposited with him, and with all moneys collected for penalties, forfeitures, fees, or costs; and he shall be credited with all payments into the Treasury made as provided by law, with all stamps returned by him uncanceled to the Treasury, and with the amount of taxes contained in the lists transmitted in the manner heretofore provided to other collectors, and by them receipted as aforesaid; also with the amount of the taxes of such persons as may have absconded, or become insolvent, prior to the day when the tax ought, according to the provisions of law, to have been collected, and with all uncollected taxes transferred by him or by his deputy acting as collector to his successor in office: *Provided*, That it shall be proved to the satisfaction of the Commissioner of Internal Revenue, who shall certify the facts to the (First) Comptroller of the Treasury, that due diligence was used by the collector. And each collector shall also be credited with the amount of all property purchased by him for the use of the United States, provided he faithfully account for and pay over the proceeds thereof upon a resale of the same as required by law.

ART. 63. Abatement, credit, and refund adjustments.—Overassessments and overpayments of gift taxes will be adjusted by means of certificates of overassessment. Credits or refunds of overpayments on the basis of such certificates of overassessment will be allowed or made even though claim for credit or refund has not been filed. However, credits or refunds may not be allowed or made after the expiration of the statutory period of limitation properly applicable unless prior to the expiration of such period a proper claim therefor has been filed by the donor. The claim, together with appropriate supporting evidence, must be filed in the office of the collector for the district in which the tax was paid. (See article 65.) As to interest

in case of credits or refunds, see sections 614 and 615 of the Revenue Act of 1928.

ART. 64. Claims by collectors.—A collector may present blanket claims on Form 843 for the abatement of certain items which were erroneously assessed. Many of these items fall in a class where the error in assessment is apparent, and the abatement of such assessment by the use of blanket claims serves to relieve the collector of the charge against him for such amounts and to relieve him in an expeditious manner of the duty of collecting from the donor certain amounts which a summary examination clearly shows are not due from the donor. Some of the items included in this class of cases are duplicate assessments, amounts assessed as unidentified collections and later identified, assessments resulting from errors in computation, and amounts assessed as excess collections which are subsequently credited against taxes later found to be due.

In the event an erroneous assessment has been paid, the collector may file a blanket claim on Form 843 for credit of such amounts against any unpaid assessments standing against the donor upon the assessment lists held by the collector. If there are no such unpaid assessments against which credit may be taken, the collector shall submit refund schedules to cover such amounts in accordance with instructions issued by the Commissioner. But no such credit or refund shall be allowed or made unless allowed or made within the statutory period of limitation properly applicable thereto.

The collector may also present claims for credit of taxes not erroneously assessed but found to be uncollectible. (See section 3218 of the Revised Statutes, as amended.) In such cases the collector or deputy collector who made the demand for the payment and is conversant with the facts may prepare the claim for credit on Form 53. Even though the collector is so credited with the amount allowed as uncollectible, nevertheless the obligation to pay still remains upon the person assessed. It is the duty of the collector to use the same diligence to collect the tax after he has received credit for an amount as uncollectible as before the allowance of such credit. Collectors should, therefore, keep a record of all taxes thus credited and of the persons from whom they are due and should enforce payment whenever it is in their power to do so.

ART. 65. Claims for credit or refund by donors.—Claims for the crediting or refunding of taxes, interest, penalties, and additions to tax erroneously or illegally collected shall be made on Form 843 and should be filed with the collector of internal revenue. A separate claim on such form shall be made for each taxable year.

Claims must set forth in detail and under oath each ground upon which a refund or credit is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof. No refund or credit will be

allowed or made after three years from the date of the payment of the tax sought to be refunded or credited, except upon one or more of the grounds set forth in a claim or an amendment thereof filed prior to the expiration of such period. A claim which does not comply with this paragraph will not be considered for any purpose as a claim for refund or credit.

The burden of proof to sustain a claim for refund or credit rests upon the claimant and all facts relied upon in support of the claim must be clearly set forth under oath. Every affidavit, argument, brief, or statement of facts, prepared or filed by an attorney or agent as argument or evidence in the matter of a claim, must have therein a statement signed by such attorney or agent showing whether or not he prepared such document and whether or not the attorney or agent knows of his own knowledge that the facts contained therein are true. When there is a hearing, should the donor not appear in person, his representative who appears must present a properly executed power of attorney and be enrolled to practice before the Treasury Department. (See article 28.) .

If a return is filed by a donor who subsequently dies and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary or letters of administration, or other similar evidence must be annexed to the claim to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter a refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim showing that the return was filed by the fiduciary and that the latter is still acting. In such cases, if a refund or interest is to be paid, letters testamentary, letters of administration, or other evidence may be required, but should be submitted only upon the receipt of a specific request therefor. If a claim is filed by a fiduciary other than the one by whom the return was filed, the necessary documentary evidence should accompany the claim.

Checks in payment of claims allowed will be drawn in the names of the persons entitled to the money and may be sent to such persons in care of an attorney or agent who has filed a power of attorney specifically authorizing him to receive such checks. The Commissioner may, however, send any such check direct to the claimant. In this connection, see section 3477 of the Revised Statutes, which provides:

SEC. 3477. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration

therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same.

The Commissioner has no authority to refund on equitable grounds penalties or other amounts legally collected. As to claims for refund of sums recovered by suit, see articles 66 and 67.

ART. 66. Claims for refund in case of judgment obtained against collector.—(a) Claims for the amount of a judgment against a collector of internal revenue for the recovery of taxes, penalties, or other sums should be made on Form 843 and filed with the Commissioner of Internal Revenue, Washington, D. C. The claimant should state the grounds of his claim under oath, giving the names of all the parties to the suit, the cause of action, the date of its commencement, the date of the judgment, the court in which it was recovered, and its amount. To this affidavit there should be annexed a certified copy of the final judgment in duplicate, a certificate of probable cause, and an itemized bill of the costs paid, receipted by the clerk or other proper officer of the court. In this connection section 989 of the Revised Statutes provides:

SEC. 989. When a recovery is had in any suit or proceeding against a collector or other officer of the revenue for any act done by him, or for the recovery of any money exacted by or paid to him and by him paid into the Treasury in the performance of his official duty, and the court certifies that there was probable cause for the act done by the collector or other officer, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the Government, no execution shall issue against such collector or other officer, but the amount so recovered shall, upon final judgment, be provided for and paid out of the proper appropriation from the Treasury.

(b) If the judgment debtor shall have already paid the amount recovered against him, the claim should be made in his name. A certificate of the clerk of the court in which the judgment was recovered (or other satisfactory evidence), showing that the judgment has been satisfied and specifying the exact sum paid in its satisfaction, with a detail of all items of costs which were paid by the judgment debtor or for which he is liable, should accompany the claim. (See further article 65.)

ART. 67. Claims for refund in case of judgment obtained against the United States.—Claims for the payment of judgments rendered by United States district courts and the United States Court of Claims against the United States representing taxes, penalties, or other sums, should be executed on Form 843 in duplicate and filed directly with the Commissioner of Internal Revenue, Washington, D. C. The claimant should state the grounds of his claim under oath, giving the names of all parties to the suit, the cause of action, the date of its commencement, the date of the judgment, the court in which it was recovered, and its amount. To this affidavit there should be annexed two certified copies of the final judgment, and an itemized bill of the costs paid, receipted by the clerk or other proper officer of the court. In the case of a judgment rendered by the Court of Claims, there may be submitted in lieu of a certified copy of the final judgment, a certificate of judgment issued by the clerk of the court and two copies of the court's opinion, if any was rendered.

ART. 68. Limitations upon the crediting and refunding of taxes paid.—(a) Except as provided in (b) of this article, (1) the Commissioner is prohibited from making credits or refunds of the tax after three years from the time the tax was paid unless before the expiration of such 3-year period a claim therefor is filed, and (2) the amount of such credit or refund shall not exceed the portion of the tax paid during the 3-year period immediately preceding the date of the allowance of the credit or refund, or, if the credit or refund is based upon a claim, the amount of the credit or refund shall not exceed the portion of the tax paid during the 3-year period immediately preceding the date of filing such claim.

(b) In any case where a person having a right to file a petition with the Board of Tax Appeals with respect to a deficiency in the tax files such petition within the prescribed time, no credit or refund of the tax for the year to which the deficiency relates shall be allowed or made, and no suit for the recovery of any part of such tax shall be instituted by the donor, except that—

(1) If the Board finds that the donor has overpaid his tax for the year to which the notice of deficiency relates, and the decision of the Board as to the amount overpaid has become final (see section 1005 of the Revenue Act of 1926), and further determines as part of its decision that any portion of the overpayment was made within three years before the filing of the refund claim or the filing of the petition, whichever is earlier, the amount of such portion of the overpayment shall be credited or refunded. The portion of the overpayment made within such period will be credited or refunded, even though the Board has not determined as part of its decision that the overpayment was so made, where a hearing upon the petition was held by the Board

prior to the expiration of 30 days after the date of the enactment of the Revenue Act of 1934.

(2) In the case of a jeopardy assessment made under section 514, if the amount which should have been assessed as determined by a decision of the Board which has become final is less than the amount already collected, the excess payment shall be credited or refunded subject to the limitations provided in (b) (1) of this article.

(3) If the amount of the deficiency determined by the Board (in a case where collection has not been stayed by the filing of a bond) is disallowed in whole or in part by the reviewing court, then the overpayment resulting from such disallowance shall be credited or refunded without the making of claim therefor. (See section 1001 (d) of the Revenue Act of 1926, as amended by section 603 of the Revenue Act of 1928.)

(4) Where the amount collected is in excess of the amount computed in accordance with the decision of the Board which has become final, the excess payment shall be credited or refunded within the period of limitation provided in section 528 (b).

(5) Where an amount is collected after the statutory period of limitation upon the beginning of distraint or a proceeding in court for collection has expired (see article 69), the donor may file a claim for refund of the amount so collected within the period of limitation provided in section 528 (b). In any such case, the decision of the Board as to whether the statutory period upon collection of the tax expired before notice of the deficiency was mailed shall, when the decision becomes final, be conclusive.

ART. 69. Crediting of accounts of collectors in cases of assessments against several persons covering same liability.—If assessments have been made against several persons covering the same tax liability, and payment of such liability by one or more of such persons has been duly certified to the Commissioner, the Commissioner, for the purpose of temporarily relieving the collector from liability under section 3218 of the Revised Statutes, may authorize him to take credit temporarily with respect to the assessments not specifically paid. Such action, however, shall not constitute an abatement and shall not discharge the liability of the persons concerned.

SEC. 607, REVENUE ACT OF 1928. EFFECT OF EXPIRATION OF PERIOD OF LIMITATION AGAINST UNITED STATES.

Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid (whether before or after the enactment of this Act) after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim.

SEC. 608, REVENUE ACT OF 1928. EFFECT OF EXPIRATION OF PERIOD OF LIMITATION AGAINST TAXPAYER.

A refund of any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) made after the enactment of this Act, shall be considered erroneous—

(a) if made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed; or

(b) in the case of a claim filed within the proper time and disallowed by the Commissioner after the enactment of this Act, if the refund was made after the expiration of the period of limitation for filing suit, unless—

(1) within such period suit was begun by the taxpayer, or

(2) within such period, the taxpayer and the Commissioner agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of final decision in one or more named cases then pending before the United States Board of Tax Appeals or the courts.

SEC. 609, REVENUE ACT OF 1928. ERRONEOUS CREDITS.

(a) Credit against barred deficiency.—Any credit against a liability in respect of any taxable year shall be void if any payment in respect of such liability would be considered an overpayment under section 607.

(b) Credit of barred overpayment.—A credit of an overpayment in respect of any tax shall be void if a refund of such overpayment would be considered erroneous under section 608.

(c) Application of section.—The provisions of this section shall apply to any credit made before or after the enactment of this Act.

SEC. 610, REVENUE ACT OF 1928. RECOVERY OF AMOUNTS ERRONEOUSLY REFUNDED.

(a) Any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) refund of which is erroneously made, within the meaning of section 608, after the enactment of this Act, may be recovered by suit brought in the name of the United States, but only if such suit is begun within two years after the making of such refund.

* * * * *

SEC. 502, REVENUE ACT OF 1934. RECOVERY OF AMOUNTS ERRONEOUSLY REFUNDED.

(a) Section 610 of the Revenue Act of 1928 is amended by adding at the end thereof a new subsection to read as follows:

“(c) Despite the provisions of subsections (a) and (b) such suit may be brought at any time within five years from the making of the refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact.”

(b) The amendment made by subsection (a) of this section shall not apply to any suit which was barred on the date of the enactment of this Act.

ART. 70. Erroneous refunds and credits.—A refund is erroneous when made after the expiration of the period of limitation for filing a claim therefor, unless within such period a claim was filed. In the case where a claim was filed within the proper time and such claim was disallowed by the Commissioner and the period of limitation for filing

suit by the donor had expired prior to the making of the refund, a refund is erroneous unless suit was begun by the donor within the period of limitation for filing suit, or unless within such period the donor and the Commissioner agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of the final decision of one or more named cases then pending before the Board of Tax Appeals or the courts. Any erroneous refund may be recovered by suit brought in the name of the United States within two years after the refund was made. If it appears that any part of an erroneous refund was induced by fraud or the misrepresentation of a material fact, the entire amount of such refund may be recovered by suit brought in the name of the United States within five years after the refund was made, except where the amount was refunded more than two years prior to the date of the enactment of the Revenue Act of 1934.

Where a refund of an overpayment would be an erroneous refund under the preceding paragraph of this article, a credit of such overpayment allowed against any tax is void. A credit is also void if allowed against a liability the assessment and collection of which was barred by the expiration of the period of limitation properly applicable thereto.

SEC. 606, REVENUE ACT OF 1928. CLOSING AGREEMENTS.

(a) **Authorization.**—The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commissioner) is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal-revenue tax for any taxable period ending prior to the date of the agreement.

(b) **Finality of agreements.**—If such agreement is approved by the Secretary, or the Undersecretary, within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

* * * * *

ART. 71. Closing agreements relating to tax liability in respect of internal-revenue taxes.—Closing agreements provided for in section 606 of the Revenue Act of 1928 may relate to any taxable period ending prior to the date of the agreement. Such an agreement may be executed even though under such agreement the donor is not liable for any tax for the period. The matter agreed upon may

relate to the total tax liability of the donor or it may relate to one or more separate items affecting the tax liability of the donor. For example, an agreement may be entered into with respect to the total amount of gifts, to deductions, or to the value of property on the date of gift. Accordingly, there may be a series of agreements relating to the tax liability for a single taxable period. Any tax or deficiency in tax determined pursuant to such an agreement shall be assessed and collected, and any overpayment determined pursuant thereto shall be credited or refunded, in accordance with the applicable provisions of the Act. (See also section 616 of the Revenue Act of 1928.)

SEC. 3467, REVISED STATUTES (AS AMENDED BY SECTION 518 OF THE REVENUE ACT OF 1934). LIABILITY OF FIDUCIARIES.

Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

ART. 72. Personal liability of fiduciaries.—Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debts due by a donor or a donor's estate for whom or for which he acts before he satisfies and pays the gift tax due to the United States from such donor, is, to the extent of such payments, personally liable for the payment of such tax.

SEC. 1104, REVENUE ACT OF 1926 (AS AMENDED BY SECTION 618, REVENUE ACT OF 1928). EXAMINATION OF RECORDS AND TAKING OF TESTIMONY.

The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

SEC. 617, REVENUE ACT OF 1928. JURISDICTION OF COURTS.

(a) If any person is summoned under this Act to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(b) The district courts of the United States at the instance of the United States are hereby invested with such jurisdiction to make and

issue, both in actions at law and suits in equity, writs and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the provisions of this Act. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such provisions.

SEC. 507. REVENUE ACT OF 1934. EXAMINATION OF BOOKS AND WITNESSES.

The Commissioner, for the purpose of determining the liability at law or in equity of a transferee of the property of any person with respect to any Federal taxes imposed upon such person, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon such liability, and may require the attendance of the transferor or transferee, or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter, with power to administer oaths to such person or persons.

ART. 73. Securing evidence—Taking testimony.—In order to ascertain the correctness of a return, to make a return where none has been made, or to determine the liability of a transferee of the property, the Commissioner has power to require the attendance and to take the testimony of the person rendering the return, any employee of such person, a transferee of the property, or any other person having knowledge in the premises. Such persons may be required to produce any relevant book, paper, or other record. This power may be exercised by any revenue agent or inspector designated for the purpose. For penalties, see article 58.

ART. 74. Power to compel compliance.—Where any person is summoned to appear and testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides has power to compel the giving of testimony, the production of books, papers, or data, and to issue any appropriate process, writ, or order.

SEC. 529. LAWS MADE APPLICABLE.

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this title.

ART. 75. Laws made applicable.—All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are made a part of the Gift Tax title of the Revenue Act of 1932.

SEC. 531. DEFINITIONS.

For the purposes of this title—

(a) *Calendar year*.—The term “calendar year” includes only the calendar year 1932 and succeeding calendar years, and, in the case of the calendar year 1932, includes only the portion of such year after the date of the enactment of this Act.

(b) *Property within United States*.—Stock in a domestic corporation owned and held by a nonresident shall be deemed property situated within the United States.

ART. 76. *Definitions*.—(a) *Calendar year*.—The term “calendar year” as used in the Gift Tax Act of 1932 includes the portion of the calendar year 1932 after the date of the enactment of such Act, i. e., June 6, 1932, and succeeding calendar years. (See article 5.)

(b) *Property within the United States*.—Section 531 provides that stock in a domestic corporation owned and held by a nonresident shall be deemed property situated in the United States for the purposes of the Gift Tax Act. For regulations relating to situs of property generally, see article 18.

SEC. 532. SHORT TITLE.

This title may be cited as the “Gift Tax Act of 1932”.

ART. 77. *Short title*.—Section 532 provides that Title III of the Revenue Act of 1932, which imposes a tax upon gifts made after the date of the enactment of such Act, may be cited as the “Gift Tax Act of 1932.”

SEC. 530. RULES AND REGULATIONS.

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this title.

ART. 78. *Promulgation of regulations*.—In pursuance of the statute, the foregoing regulations are hereby made and promulgated.

GUY T. HELVERING

Commissioner of Internal Revenue.

Approved February 26, 1936.

WAYNE C. TAYLOR,

Acting Secretary of the Treasury.

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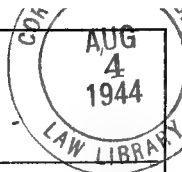
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U. S. TREASURY DEPARTMENT
BUREAU OF INTERNAL REVENUE



REGULATIONS 108

RELATING TO THE

GIFT TAX

UNDER THE

INTERNAL REVENUE CODE



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CHAPTER I—BUREAU OF INTERNAL REVENUE

SUBCHAPTER B—PART 86

REGULATIONS 108, RELATING TO THE GIFT TAX UNDER CHAPTER 4 OF THE INTERNAL REVENUE CODE, AS AMENDED

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AUTHORITY: Sections 86.0 to 86.75, inclusive, are issued under the authority contained in sections 1029 and 3791 of the Internal Revenue Code (53 Stat. 157, 467; 26 U. S. C., 1029, 3791).

REGULATIONS 108

SECTION 86.0 SCOPE OF REGULATIONS.—These regulations deal with the gift tax imposed by chapter 4 of the Internal Revenue Code and apply to transfers of property by gift during the calendar year 1940 and thereafter. They do not affect gift tax regulations (including Treasury decisions) heretofore issued in so far as they relate to taxes imposed on gifts made prior to January 1, 1940.

Each section, subsection, or paragraph of the Internal Revenue Code appearing in the regulations is followed by the section or sections of the prescribed regulations relating thereto and shall be considered as a part thereof. Sections of the Code set forth are readily distinguishable from the prescribed regulations sections since the latter appear in larger type and bear a number commencing with 86 and a decimal point. The number "86" is used in numbering the sections of the regulations for the reason that the regulations constitute Part 86 of Title 26 of the Code of Federal Regulations. Identifying portions of the section numbers (following 86.) begin with "0" and follow in sequence. Except as otherwise indicated, the statutory references are to the Internal Revenue Code.

To the extent that Regulations 79 (1936 Edition), as amended by Treasury decisions, have been made applicable to gift taxes imposed by the Internal Revenue Code, they are hereby superseded.

SEC. 1000. IMPOSITION OF TAX. [AS ORIGINALLY ENACTED.]

(a) For the calendar year 1940 and each calendar year thereafter a tax, computed as provided in section 1001, shall be imposed upon the transfer during such calendar year by any individual, resident or non-resident, of property by gift. Gift taxes for the calendar years 1932-1939, inclusive, shall not be affected by the provisions of this chapter, but shall remain subject to the applicable provisions of the Revenue Act of 1932, except as such provisions are modified by legislation enacted subsequent to the Revenue Act of 1932.

(b) The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; but, in the case of a nonresident not a citizen of the United States, shall apply to a transfer only if the property is situated within the United States.

SEC. 452. POWERS OF APPOINTMENT. [REVENUE ACT OF 1942, TITLE IV; PART II, ENACTED OCTOBER 21, 1942.]

(a) **GENERAL RULE.**—Section 1000 (relating to imposition of gift tax) is amended by inserting at the end thereof the following new subsection:

"(c) **POWERS OF APPOINTMENT.**—An exercise or release of a power of appointment shall be deemed a transfer of property by the individual possessing such power. For the purposes of this subsection the term 'power of appointment' means any power to appoint exercisable by an individual either alone or in conjunction with any person, except—

"(1) a power to appoint within a class which does not include any others than the spouse of such individual, spouse of the creator of the power, descendants of such individual or his spouse, descendants (other than such individual) of the creator of the power or his spouse, spouses of such descendants, donees described in section 1004(a) (2), and donees described in section 1004(b). As used in this paragraph, the term 'descendant' includes adopted and illegitimate descendants, and the term 'spouse' includes former spouse; and

"(2) a power to appoint within a restricted class if such individual did not receive any beneficial interest, vested or contingent, in the property from the creator of the power or thereafter acquire any such interest, and if the power is not exercisable to any extent for the benefit of such individual, his estate, his creditors, or the creditors of his estate.

If a power to appoint is exercised by creating another power to appoint, such first power shall not be considered excepted under paragraph (1) or (2) from the definition of power of appointment to the extent of the value of the property subject to such second power to appoint. For the purposes of the preceding sentence the value of the property subject to such second power to appoint shall be its value unreduced by any precedent or subsequent interest not subject to such power to appoint."

(b). **POWERS WITH RESPECT TO WHICH AMENDMENTS NOT APPLICABLE.**—

(1) The amendments made by this section shall not apply with respect to a power to appoint, created on or before the date of enactment of this Act, which is other than a power exercisable in favor of the donee of the power, his estate, his creditors, or the creditors of his estate, unless such power is exercised after the date of enactment of this Act.

(2) The amendments made by this section shall not become applicable with respect to a power to appoint created on or before the date of enactment of this Act, which is exercisable in favor of the donee of the power, his estate, his creditors, or the creditors of his estate, if at such date the donee of such power is under a legal disability to release such power, until six months after the termination of such legal disability. For the purposes of the preceding sentence, an individual in the military or naval forces of the United States shall, until the termination of the present war, be considered under a legal disability to release a power to appoint.

(c) **RELEASE ON OR BEFORE JANUARY 1, 1943.**—

(1) A release of a power to appoint before January 1, 1943, shall not be deemed a transfer of property by the individual possessing such power.

(2) This subsection shall apply to all calendar years prior to 1943.

SEC. 10. EXTENSION OF TIME IN CONNECTION WITH RELEASE OF POWERS OF APPOINTMENT. [CURRENT TAX PAYMENT ACT OF 1943.]

* * * section 452(c) of the Revenue Act of 1942 is amended to read as follows:

"(1) A release of a power to appoint before March 1, 1944, shall not be deemed a transfer of property by the individual possessing such power.

"(2) This subsection shall apply to all calendar years prior to 1944 and to that part of the calendar year 1944 prior to March 1, 1944."

SEC. 453. GIFTS OF COMMUNITY PROPERTY. [REVENUE ACT OF 1942, TITLE IV, PART II. EFFECTIVE FOR CALENDAR YEAR 1943 AND EACH CALENDAR YEAR THEREAFTER.]

Section 1000 (relating to tax on gifts) is amended by inserting at the end thereof the following new subsection:

"(d) **COMMUNITY PROPERTY.**—All gifts of property held as community property under the law of any State, Territory, or possession of the United States, or any foreign country shall be considered to be the gifts of the husband except that gifts of such property as may be shown to have been received as compensation for personal services actually rendered by the wife or derived originally from such compensation or from separate property of the wife shall be considered to be gifts of the wife."

SEC. 451. GIFTS TO WHICH AMENDMENTS APPLICABLE. [REVENUE ACT OF 1942, TITLE IV, PART II.]

Except as otherwise expressly provided, the amendments made by this Part shall be applicable only with respect to gifts made in the calendar year 1943, and succeeding calendar years.

SEC. 86.1 IMPOSITION OF TAX.—The statute imposes no tax upon property, but subjects to tax transfers of property by gift. The statute taxes all such transfers of property (other than gifts specified in section 1003(b) (2) and (3) and other than releases before March 1, 1944, of powers to appoint created on or before October 21, 1942, the date of enactment of the Revenue Act of 1942) to the extent that they exceed the deductions authorized by section 1004. The tax is not limited in its imposition to transfers of property without a valuable consideration, which at common law are treated as gifts, but extends to sales and exchanges for less than an adequate and full consideration in money or money's worth. (See section 86.8.) The tax applies to all individuals, whether resident or nonresident of the United States, but, in the case of a nonresident not a citizen, the tax applies only to transfers of property situated within the United States. For the definition of "resident," see section 86.4. With reference to the situs of property, see section 86.18.

SEC. 86.2 TRANSFERS REACHED.—(a) *In general.*—The statute imposes a tax whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. Thus, for example, a taxable transfer may be effected by the declaration of a trust, the forgiving of a debt, the assignment of a

judgment, the assignment of the benefits of a contract of insurance, or the transfer of cash, certificates of deposit, or Federal, State, or municipal bonds. Various statutory provisions, which exempt bonds, notes, bills and certificates of indebtedness of the Federal Government or its agencies and the interest thereon from taxation, are not applicable to the gift tax since this tax is an excise tax on the transfer, and is not a tax on the subject of the gift. However, a gift of a bond, note, or certificate of indebtedness issued by the Federal Government prior to March 1, 1941, if made by a nonresident alien not engaged in business in the United States, is not subject to the tax; but a gift by any such nonresident alien of an obligation of the Federal Government issued on or after March 1, 1941, is subject to the tax. Inasmuch as the tax also applies to gifts indirectly made, all transactions whereby property or property rights or interests are gratuitously passed or conferred upon another, regardless of the means or device employed, constitute gifts subject to tax. See, further, section 86.8. (However, for special provisions with respect to the exercise or release of powers of appointment, see subsection (b) of this section.) In the following examples of transactions resulting in taxable gifts, it will be understood that the transfers were not made for an adequate and full consideration in money or money's worth:

(1) Transfer of property by a corporation to B is a gift to the latter from the stockholders of the corporation. If B himself is a stockholder, the transfer, not being a distribution from earnings or in liquidation to which B is entitled as a stockholder, is a gift to him from the other stockholders.

(2) The transfer of property to B where there is imposed upon B the obligation of paying a commensurate annuity to C is a gift to C.

(3) The payment of money or the transfer of property to B in consideration whereof B is to render a service to C, is a gift to C, or both to B and C, depending on whether the service to be rendered by B to C is or is not an adequate and full consideration in money or money's worth for that which is received by B.

(4) If A creates a joint bank account for himself and B (or similar type of ownership where A can regain the entire fund without B's consent), there is a gift to B when B draws upon the account for his own benefit, to the extent of the amount drawn.

(5) If A with his own funds purchases property and has the title thereto conveyed to himself and B as joint owners, with rights of survivorship (other than a joint ownership described in example (4) of this section), but which rights may be defeated by either party severing his interest, there is a gift to B in the amount of one-half the value of such property.

(6) If a husband with his own funds purchases property and has the title thereto conveyed to himself and wife as tenants by the en-

tirety, and under the law of the jurisdiction governing the rights of the tenants there is no right of severance by which either of the tenants, acting alone, can defeat the right of the survivor to the whole of the property, he consummates a gift of such property valued as provided in section 86.19(h).

(7) If A, without retaining a power to revoke the trust or to change the beneficial interests, transfers property in trust whereby B is to receive the income therefrom for life and at his death the trust is to terminate and the corpus is to be returned to A provided A survives but if A predeceases B the corpus is to pass to C, A consummates a gift of such property valued as provided in section 86.19(g).

(8) If the insured purchases a life insurance policy, or pays a premium on a previously issued policy, the proceeds of which are payable to a beneficiary or beneficiaries other than his estate, and with respect to which the insured retains no power to revest the economic benefits in himself or his estate or to change the beneficiaries or their proportionate benefits (or if the insured relinquishes by assignment, by designation of a new beneficiary or otherwise, every such power that was retained in a previously issued policy), the insured consummates a gift of the value of such policy, or to the extent of such premium, even though the right of the assignee or beneficiary to receive the benefits is conditioned upon his surviving the insured. For the valuation of life insurance policies, see section 86.19(i).

(b) *Transfers under power of appointment.*—The exercise of a power of appointment after June 6, 1932, and before January 1, 1943, constitutes a gift by the individual possessing the power if the power is exercisable in favor of any person or persons in the discretion of such individual, or, however limited as to the persons or objects in whose favor the appointment may be made, if it is exercisable in favor of the individual possessing the power, his estate, his creditors, or the creditors of his estate. The release before March 1, 1944, of a power to appoint created on or before October 21, 1942, the date of enactment of the Revenue Act of 1942, is excepted from the application of the tax by reason of the express provisions of section 452(c) of the Revenue Act of 1942, as amended by section 10 of the Current Tax Payment Act of 1943. It is presumed that all general powers of appointment are releasable, unless the local law on the subject is to the contrary; and it is presumed that the method employed to release the power is effective, unless it is not in accordance with the local law on the subject (or, in the absence of such local law, is not in accordance with the local law relating to similar transactions). Section 452(c) of the Revenue Act of 1942, however, does not apply to any release of a power reserved, directly or indirectly, by a donor upon a transfer, as distinguished from a donee of a power of appointment who releases the power which he had received from another person.

See section 86.3 with respect to the taxability of the relinquishment of reserved powers.

During the calendar year 1943 and any calendar year thereafter, section 1000(c), as added by the Revenue Act of 1942, applies, subject, however, to section 452(c) of such Act, as amended by section 10 of the Current Tax Payment Act of 1943. That is, during such years an exercise or release (other than a release prior to March 1, 1944), without an adequate and full consideration in money or money's worth, of a power of appointment created on or before October 21, 1942, the date of enactment of the Revenue Act of 1942 (including a power to appoint exercisable in conjunction with another person) constitutes a gift by the individual possessing such power, except in the case of the following:

(1) The exercise or release of a power to appoint which is not exercisable to any extent for the benefit of such individual, his creditors, his estate, or the creditors of his estate, and which is exercisable in favor of only one or more other persons or objects—

(i) within a class which does not include any others than the spouse of such individual, spouse of the creator of the power, descendants of such individual or his spouse, descendants of the creator of the power or his spouse, spouses of such descendants, charitable, etc., organizations described in section 1004(a)(2) and charitable, etc., organizations described in section 1004(b); or

(ii) within a restricted class if such individual did not receive any beneficial interest, vested or contingent, in the property from the creator of the power or thereafter acquire any such interest.

For the purposes of this paragraph, the term "descendant" includes adopted and illegitimate descendants, and the term "spouse" includes former spouse. The treatment of adopted and illegitimate descendants as descendants is intended to include adopted and illegitimate children (and their descendants and their adopted and illegitimate children) as descendants, if such children would be descendants had they been born as legitimate children in the station to which they are adopted or born. The provisions of (ii) apply to a power possessed by a disinterested trustee or one occupying a similar status to appoint within a relatively small class. For example, a power to appoint within a class composed of A's children would be a power to appoint within a restricted class. On the other hand, a power to appoint to anyone except A and his family would not be a power confined to a restricted class. The restricted character of a class is not affected by the fact that the decedent has power to appoint to any number of charitable, etc., organizations described in section 1004 (a)(2) or (b). A power to appoint is not confined to a restricted class merely because the power is not exercisable in favor of such individual, his creditors, his estate, or the creditors of his estate, or all of them.

(2) The release of a power to appoint created on or before October 21, 1942, the date of the enactment of the Revenue Act of 1942, which is not a power exercisable in favor of the donee of the power (who is the appointor), his estate, his creditors, or the creditors of his estate.

(3) The release of a power to appoint created on or before October 21, 1942, the date of the enactment of the Revenue Act of 1942, which power is exercisable in favor of the donee of the power (who is the appointor), his creditors, his estate, or the creditors of his estate, if on such date such appointor was under a legal disability to release such power and if the release thereof is effected prior to March 1, 1944, or the day after six months immediately following the termination of the legal disability, whichever is later. The legal disability referred to is determined under local law and may include the disability of an insane person, a minor, or an unborn child. The fact that a power of appointment of the type possessed by the individual was not generally releasable under the local law does not place the individual under a legal disability within the meaning of section 452(b) (2) of the Revenue Act of 1942. Until the termination of the present war, an individual in active service in the military or naval forces of the United States on October 21, 1942, shall be considered under a legal disability to release a power to appoint while such individual is in such service.

If a power to appoint is exercised by creating another power to appoint, to the extent of the property subject to such second power to appoint, such first power shall not be considered excepted in (1) above of this subsection. For this purpose the statute prescribes that the value of the property subject to such second power to appoint shall be its value unreduced by any precedent or subsequent interest not subject to such power to appoint. Thus if the donor has a power to appoint a fund of \$100,000 within a class consisting only of his children (which is one of the excepted powers) and during his lifetime exercises such power by giving one child a power to appoint \$25,000 of such fund and by making an outright appointment of \$75,000, only \$25,000 is considered a gift. If, however, the individual had appointed the income from the entire fund to such child for life with power in such child to appoint the remainder in his will, the whole \$100,000 would be considered a gift. This provision applies whether or not the newly created power to appoint is of a kind described in (1) above of this subsection.

The term "power of appointment" includes any power received by the appointor from another person which is in substance and effect a power to appoint regardless of the nomenclature used in creating the power and local property law connotations. For example, if a settlor transfers property in trust for the life of his wife with a power in the wife to appropriate or consume the principal of the trust, the wife has a power of appointment and the release of such a power constitutes

a taxable transfer. On the other hand, if, for example, a power of appointment with respect to the remainder, exercisable by the life tenant, is subject to the consent of the trustee who is a disinterested third party not receiving any beneficial interest upon such transfer, upon the exercise or release of the power by the life tenant no part of the gift of such remainder is attributable to the trustee personally. Similarly, if property is transferred in trust by a grantor reserving the power to alter, amend, revoke, or terminate the trust with the consent of the trustee who is a disinterested party not receiving any beneficial interest upon the transfer, the exercise or relinquishment of such power by the grantor with the consent of such trustee is not a taxable transfer by the latter. Ordinarily, powers of management with respect to property in trust, such as the determination of whether distributions shall be made annually or quarterly, the making of investments and reinvestments, or the determination of items of income or principal under recognized rules of accounting, are not powers of appointment over property under section 1000(c).

A power to appoint is exercised where the property subject thereto is appointed to the taker in default of appointment, regardless of whether or not the appointed interest and the interest in default of appointment are identical, and regardless of whether or not the appointee renounces any right to take under the appointment. For the purposes of section 1000(c), a release of a power of appointment need not be express or formal in character. For example, the failure to exercise a power of appointment within a specified time, resulting in the termination of the power of appointment, is taxable if the other conditions imposed by section 1000(c) are present.

The reduction in scope of a power of appointment, as defined in section 1000(c), to an excepted power under section 1000(c) (1) or (2), which is not a power of appointment as thus defined, constitutes the release of the power of appointment. In such case, the release is effected at such time as under the applicable law the power cannot be exercised in favor of persons or objects other than those described in section 1000(c) (1) or (2). If such release of a power created on or before October 21, 1942, the date of enactment of the Revenue Act of 1942, is effected prior to March 1, 1944 (or, in a case described in (3) above of this subsection, relating to persons under a legal disability, prior to the date specified therein), a taxable transfer does not result. For the purpose of determining whether a power created on or before October 21, 1942, satisfied the requirements of section 1000(c) (2) on March 1, 1944 (or other applicable date in a case described in (3) above of this subsection), the fact as to whether the individual received any beneficial interest in the property is to be ascertained without regard to the power to appoint which he received. If such release is effected on or after March 1, 1944 (or, in a case de-

scribed in (3) above of this subsection, relating to persons under a legal disability, on or after the date specified therein), a taxable transfer results.

Section 1000(c) does not apply to a power reserved, directly or indirectly, by a donor upon a transfer, as distinguished from the possessor of a power of appointment received from another person. See section 86.3 with respect to the taxability of reserved powers.

(c) *Transfers of community property after 1942.*—During the calendar year 1943 and any calendar year thereafter any gift of property held as community property under the law of any State, Territory, or possession of the United States, or any foreign country constitutes a gift of the husband for the purpose of the gift tax statute (regardless of whether under the terms of the transfer the husband alone or the wife alone is designated as the donor or whether both are so designated as donors), except to the extent that such property is shown (1) to have been received as compensation for personal services actually rendered by the wife or derived originally from such compensation, or (2) to have been derived originally from separate property of the wife. The entire property comprising the gift is prima facie a gift of the husband, but any portion thereof which is shown to be economically attributable to the wife as prescribed in the preceding sentence constitutes a gift of the wife.

The rule stated in the preceding paragraph applies alike to a transfer by way of gift of community property to a third party or third parties, to a division of such community property between husband and wife into the separate property of each, and to a transfer by the husband and wife of any part of such community property into the separate property either of the husband or of the wife, or into a joint estate or tenancy by the entirety of both spouses. In all of such cases the value of the property so transferred or so divided, as the case may be, is a gift by the husband to the extent that it exceeds the aggregate amount of the value of that portion which is shown to be economically attributable to the wife, as prescribed in the preceding paragraph, and of the value of the husband's interest in such property after such transfer or division. The value of the property so transferred or so divided, as the case may be, is a gift by the wife to the extent that the portion of such value which is shown to be economically attributable to her, as prescribed in the preceding paragraph, exceeds the value of her interest in such property after such transfer or division. See examples (5) and (6) of subsection (a) of this section. No gift tax results from a transfer on or after January 1, 1943, of separate property of either spouse into community property.

Property derived originally from compensation for personal services actually rendered by the wife or from separate property of the wife includes property that may be identified as (1) income yielded by

property received as such compensation or by such separate property, and (2) property clearly traceable (by reason of acquisition in exchange, or other derivation) to property received as such compensation, to such separate property, or to such income. The rule established by this statute for apportioning the respective contributions of the spouses is applicable regardless of varying local rules of apportionment, and State presumptions are not operative against the Commissioner.

SEC. 86:3 CESSATION OF DONOR'S DOMINION AND CONTROL.—The tax is not imposed upon the receipt of the property by the donee, nor is it necessarily determined by the measure of enrichment resulting to the donee from the transfer, nor is it conditioned upon ability to identify the donee at the time of the transfer. On the contrary, the tax is a primary and personal liability of the donor, is an excise upon his act of making the transfer, is measured by the value of the property passing from the donor, and attaches regardless of the fact that the identity of the donee may not then be known or ascertainable.

As to any property, or part thereof or interest therein, of which the donor has so parted with dominion and control as to leave in him no power to change the disposition thereof, whether for his own benefit or for the benefit of another, the gift is complete. But if upon a transfer of property (whether in trust or otherwise) the donor reserves any power over the disposition thereof, the gift may be wholly incomplete, or may be partially complete and partially incomplete, depending upon all the facts in the particular case. Accordingly, in every case of a transfer of property subject to a reserved power, the terms of the power must be examined and its scope determined.

A gift is incomplete in every instance where a donor reserves the power to revest the beneficial title to the property in himself. A gift is also incomplete where and to the extent that a reserved power gives the donor the right to name new beneficiaries or to change the interests of the beneficiaries as between themselves. Thus, the transfer of an estate for life where, by an exercise of the power, the estate may be terminated or cut down to one of less value, and without restriction upon the extent to which the estate may be so cut down, constitutes an incomplete gift. If in this example the power was confined to the right to cut down the estate for life to one for a term of five years, the certainty of an estate for not less than that term results in a gift to that extent complete.

A gift shall not be considered incomplete, however, merely because the donor reserves the power to change the manner or time of enjoyment thereof. Thus, the creation of a trust the income of which is to be paid annually to the donee for a period of years, the corpus

being distributable to him at the end of the period, and the power reserved by the donor being limited to a right to require that, instead of the income being so payable, it should be accumulated and distributed with the corpus to such donee at the termination of the period, constitutes a completed gift.

A donor shall be considered as himself having the power where it is exercisable by him in conjunction with any person not having a substantial adverse interest in the disposition of the transferred property or the income therefrom. A trustee, as such, is not a person having an adverse interest in the disposition of the trust property or its income.

The relinquishment or termination of a power to change the disposition of the transferred property, occurring otherwise than by the death of the donor (the statute being confined to transfers by living donors), is regarded as the event which completes the gift and causes the tax to apply. For example, if A transfers property in trust for the benefit of B and C but reserves the power as trustee to change the proportionate interests of B and C, and if A thereafter has another person appointed trustee in place of himself, such later relinquishment of the power by A to the new trustee completes the gift of the transferred property, whether or not the new trustee has a substantial adverse interest. The receipt of income or of other enjoyment of the transferred property by the transferee or by the beneficiary (other than by the donor himself) during the interim between the making of the initial transfer and the relinquishment or termination of the power operates to free such income or other enjoyment from the power, and constitutes a gift of such income or of such other enjoyment taxable as of the calendar year of its receipt.

If the donor contends that the power is of such nature as to render the gift incomplete, and hence not subject to the tax as of the calendar year of the initial transfer, the transaction shall be disclosed in the return and evidence showing all relevant facts, including a copy of the instrument of transfer, should be submitted.

If for any calendar year prior to the calendar year 1939 a transfer has been subjected to payment of the tax despite the fact that the donor retained a power to name new beneficiaries or to change the interests of the beneficiaries as between themselves, and if the tax for such calendar year has been finally determined on such basis, and for all gift tax purposes such transfer has been treated, for such calendar year and each subsequent calendar year, as subject to the tax, and the donor agrees, in a closing agreement executed under the provisions of section 3760, that he will continue so to treat such transfer, then the relinquishment or termination of the power so retained by the donor shall not be treated as a gift subject to the tax.

SEC. 86.4 RESIDENCE.—The statute imposes the tax upon the transfer of property by gift made by any individual, resident or nonresident, but provides that in the case of a nonresident not a citizen of the United States the tax shall apply to a transfer only if the property is situated within the United States. (See section 86.18.) If the donor is a citizen of the United States, whether a resident or a nonresident thereof, or is a resident of the United States, whether or not a citizen thereof, the tax applies, regardless of where the property, whether real or personal, is situated.

A resident is one who has his domicile in the United States (including only the States, the Territories of Alaska and Hawaii, and the District of Columbia) at the time of the gift. (See section 3797(a)(9).) All others are nonresidents. A person acquires a domicile in a place by living there for even a brief period of time with no definite present intention of moving therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile effect such change unless accompanied by an actual removal.

SEC. 1001. COMPUTATION OF TAX.

(a) The tax for each calendar year shall be an amount equal to the excess of—

(1) a tax, computed in accordance with the Rate Schedule hereinafter set forth, on the aggregate sum of the net gifts for such calendar year and for each of the preceding calendar years, over

(2) a tax, computed in accordance with the said Rate Schedule, on the aggregate sum of the net gifts for each of the preceding calendar years.

RATE SCHEDULE

(as amended by section 402(a) of the Revenue Act of 1941; effective for the calendar year 1942 and each calendar year thereafter).

If the net gifts are:	The tax shall be:
Not over \$5,000-----	2¼ % of the net gifts.
Over \$5,000 but not over \$10,000.	\$112.50, plus 5¼ % of excess over \$5,000.
Over \$10,000 but not over \$20,000.	\$375, plus 8¼ % of excess over \$10,000.
Over \$20,000 but not over \$30,000.	\$1,200, plus 10½ % of excess over \$20,000.
Over \$30,000 but not over \$40,000.	\$2,250, plus 13½ % of excess over \$30,000.
Over \$40,000 but not over \$50,000.	\$3,600, plus 16½ % of excess over \$40,000.
Over \$50,000 but not over \$60,000.	\$5,250, plus 18¾ % of excess over \$50,000.
Over \$60,000 but not over \$100,000.	\$7,125, plus 21 % of excess over \$60,000.
Over \$100,000 but not over \$250,000.	\$15,525, plus 22½ % of excess over \$100,000.

If the net gifts are—Continued.

Over \$250,000 but not over \$500,000.
Over \$500,000 but not over \$750,000.
Over \$750,000 but not over \$1,000,000.
Over \$1,000,000 but not over \$1,250,000.
Over \$1,250,000 but not over \$1,500,000.
Over \$1,500,000 but not over \$2,000,000.
Over \$2,000,000 but not over \$2,500,000.
Over \$2,500,000 but not over \$3,000,000.
Over \$3,000,000 but not over \$3,500,000.
Over \$3,500,000 but not over \$4,000,000.
Over \$4,000,000 but not over \$5,000,000.
Over \$5,000,000 but not over \$6,000,000.
Over \$6,000,000 but not over \$7,000,000.
Over \$7,000,000 but not over \$8,000,000.
Over \$8,000,000 but not over \$10,000,000.
Over \$10,000,000-----

The tax shall be—Continued.

\$49,275, plus 24% of excess over \$250,000.
\$109,275, plus 26½% of excess over \$500,000.
\$174,900, plus 27¾% of excess over \$750,000.
\$244,275, plus 29¼% of excess over \$1,000,000.
\$317,400, plus 31½% of excess over \$1,250,000.
\$396,150, plus 33¾% of excess over \$1,500,000.
\$564,900, plus 36¾% of excess over \$2,000,000.
\$748,650, plus 39¾% of excess over \$2,500,000.
\$947,400, plus 42% of excess over \$3,000,000.
\$1,157,400, plus 44¼% of excess over \$3,500,000.
\$1,378,650, plus 47¼% of excess over \$4,000,000.
\$1,851,150, plus 50¼% of excess over \$5,000,000.
\$2,353,650, plus 52½% of excess over \$6,000,000.
\$2,878,650, plus 54¾% of excess over \$7,000,000.
\$3,426,150, plus 57% of excess over \$8,000,000.
\$4,566,150, plus 57¾% of excess over \$10,000,000.

(b) For the purpose of this section the term "preceding calendar years" means the calendar year 1932 and all calendar years intervening between the calendar year 1932 and the calendar year for which the tax is being computed.

(c) CROSS REFERENCE.—

For definition of "calendar year", see section 1030(a).

RATE SCHEDULE

(under section 1001 as enacted on February 10, 1939; effective for calendar years 1940 and 1941).

Upon net gifts not in excess of \$10,000, 1½ per centum.

\$150 upon net gifts of \$10,000; and upon net gifts in excess of \$10,000 and not in excess of \$20,000, 3 per centum in addition of such excess.

\$450 upon net gifts of \$20,000; and upon net gifts in excess of \$20,000 and not in excess of \$30,000, 4½ per centum in addition of such excess.

\$900 upon net gifts of \$30,000; and upon net gifts in excess of \$30,000 and not in excess of \$40,000, 6 per centum in addition of such excess.

\$1,500 upon net gifts of \$40,000; and upon net gifts in excess of \$40,000 and not in excess of \$50,000, 7½ per centum in addition of such excess.

\$2,250 upon net gifts of \$50,000; and upon net gifts in excess of \$50,000 and not in excess of \$70,000, 9 per centum in addition of such excess.

\$4,050 upon net gifts of \$70,000; and upon net gifts in excess of \$70,000 and not in excess of \$100,000, 10½ per centum in addition of such excess.

\$7,200 upon net gifts of \$100,000; and upon net gifts in excess of \$100,000 and not in excess of \$200,000, 12¾ per centum in addition of such excess.

\$19,950 upon net gifts of \$200,000; and upon net gifts in excess of \$200,000 and not in excess of \$400,000, 15 per centum in addition of such excess.

\$49,950 upon net gifts of \$400,000; and upon net gifts in excess of \$400,000 and not in excess of \$600,000, 17¼ per centum in addition of such excess.

\$84,450 upon net gifts of \$600,000; and upon net gifts in excess of \$600,000 and not in excess of \$800,000, 19½ per centum in addition of such excess.

\$123,450 upon net gifts of \$800,000; and upon net gifts in excess of \$800,000 and not in excess of \$1,000,000, 21¾ per centum in addition of such excess.

\$166,950 upon net gifts of \$1,000,000; and upon net gifts in excess of \$1,000,000 and not in excess of \$1,500,000, 24 per centum in addition of such excess.

\$286,950 upon net gifts of \$1,500,000; and upon net gifts in excess of \$1,500,000 and not in excess of \$2,000,000, 26¾ per centum in addition of such excess.

\$418,200 upon net gifts of \$2,000,000; and upon net gifts in excess of \$2,000,000 and not in excess of \$2,500,000, 28½ per centum in addition of such excess.

\$560,700 upon net gifts of \$2,500,000; and upon net gifts in excess of \$2,500,000 and not in excess of \$3,000,000, 34¾ per centum in addition of such excess.

\$714,450 upon net gifts of \$3,000,000; and upon net gifts in excess of \$3,000,000 and not in excess of \$3,500,000, 33 per centum in addition of such excess.

\$879,450 upon net gifts of \$3,500,000; and upon net gifts in excess of \$3,500,000 and not in excess of \$4,000,000, 35¼ per centum in addition of such excess.

\$1,055,700 upon net gifts of \$4,000,000; and upon net gifts in excess of \$4,000,000 and not in excess of \$4,500,000, 37½ per centum in addition of such excess.

\$1,243,200 upon net gifts of \$4,500,000; and upon net gifts in excess of \$4,500,000 and not in excess of \$5,000,000, 39¾ per centum in addition of such excess.

\$1,441,950 upon net gifts of \$5,000,000; and upon net gifts in excess of \$5,000,000 and not in excess of \$6,000,000, 42 per centum in addition of such excess.

\$1,861,950 upon net gifts of \$6,000,000; and upon net gifts in excess of \$6,000,000 and not in excess of \$7,000,000, 44¼ per centum in addition of such excess.

\$2,304,450 upon net gifts of \$7,000,000; and upon net gifts in excess of \$7,000,000 and not in excess of \$8,000,000, 45¾ per centum in addition of such excess.

\$2,761,950 upon net gifts of \$8,000,000; and upon net gifts in excess of \$8,000,000 and not in excess of \$9,000,000, 47¼ per centum in addition of such excess.

\$3,234,450 upon net gifts of \$9,000,000; and upon net gifts in excess of \$9,000,000 and not in excess of \$10,000,000, 48¾ per centum in addition of such excess.

\$3,721,950 upon net gifts of \$10,000,000; and upon net gifts in excess of \$10,000,000 and not in excess of \$20,000,000, 50¼ per centum in addition of such excess.

\$8,746,950 upon net gifts of \$20,000,000; and upon net gifts in excess of \$20,000,000 and not in excess of \$50,000,000, 51¾ per centum in addition of such excess.

\$24,271,950 upon net gifts of \$50,000,000; and upon net gifts in excess of \$50,000,000, 52½ per centum in addition of such excess.

SEC. 207. GIFT TAX. [REVENUE ACT OF 1940. ENACTED ON JUNE 25, 1940; EFFECTIVE FOR CALENDAR YEARS 1940 AND 1941.]

Section 1001 of the Internal Revenue Code is amended by adding at the end thereof the following new subsection:

"(d) **DEFENSE TAX FOR 1940-1945.**—Despite the provisions of subsection (a)—

"(1) The tax for each of the calendar years 1941 to 1945, both inclusive, shall be an amount equal to the excess of—

"(A) 110 per centum of a tax, computed in accordance with the Rate Schedule hereinbefore set forth, on the aggregate sum of the net gifts for such calendar year and for each of the preceding calendar years, over

"(B) 110 per centum of a tax, computed in accordance with the said Rate Schedule, on the aggregate sum of the net gifts for each of the preceding calendar years.

"(2) The tax for the calendar year 1940 shall be the sum of (A) the tax computed under subsection (a), plus (B) an amount which bears the same ratio to 10 per centum of the tax so computed as the amount of gifts made after the date of the enactment of the Revenue Act of 1940 bears to the total amount of gifts made during the year. For the purposes of this paragraph, the term 'gifts' does not include gifts which, under section 1003(b)(2), are not to be included in computing the total amount of gifts made during the calendar year 1940, or gifts which, in the case of a citizen or resident, are allowed as a deduction by section 1004(a)(2), or gifts which, in the case of a nonresident not a citizen of the United States, are allowed as a deduction by section 1004(b)."

SEC. 402. GIFT TAX RATES. [REVENUE ACT OF 1941.]

(a) **RATES.**—The Rate Schedule of section 1001 of the Internal Revenue Code is amended to read as follows:

* * * * *

(b) **YEARS TO WHICH AMENDMENTS APPLICABLE.**—The amendments made by this section shall be applied in computing the tax for the calendar year 1942 and each calendar year thereafter (but not the tax for the calendar year 1941 or a previous calendar year), and such amendments shall be applied in all computations in respect of the calendar year 1941 and previous calendar years for the purpose of

computing the tax for the calendar year 1942 and any calendar year thereafter.

(c) **DEFENSE TAX REPEALED.**—Section 1001(d) of the Internal Revenue Code (relating to defense tax for five years on gifts) is repealed.

SEC. 86.5 TAX RATE SCHEDULES.—The rate schedule of section 1001 of the Internal Revenue Code as enacted on February 10, 1939, is applicable in computing the tax under the provisions of subsection (a) of that section for the calendar years 1940 and 1941. The defense tax imposed by subsection (d) of section 1001 (as added by section 207 of the Revenue Act of 1940) is applicable to the calendar years 1940 and 1941. For such years the tax is the sum of the amount computed in accordance with the rate schedule plus 10 percent thereof (or plus a proportion of such 10 percent for the calendar year 1940 as explained in section 86.7), and only such 10 percent or proportion thereof is referred to as the defense tax. The Revenue Act of 1941 (section 402) increased the rates and repealed the defense tax, effective for the calendar year 1942 and each calendar year thereafter, and the rate schedule of section 1001 as amended by such Act is applicable in computing the tax for the calendar year 1942 and each calendar year thereafter.

SEC. 86.6 USE OF TABLE FOR COMPUTING GIFT TAX.—On the following page is a tabulation of the rate schedules (1) applicable to the calendar year 1942 and each calendar year thereafter and (2) applicable to the calendar years 1940 and 1941. Care should be exercised in selecting the appropriate rate schedule (column 1 or 2). Only column 1 should be used in the computation of the tax for the year 1942 or any year thereafter. Only column 2 should be used in the computation of the tax for the years 1940 and 1941.

In using the table, select the amount set out in column A which is equal to, or which is the largest amount shown therein that is less than, the amount of the net gifts upon which tax is to be computed as provided in section 86.7. The tax upon the amount so selected is indicated on the same line in the first subcolumn of column 1 or 2. The tax upon any part of the amount of the net gifts in excess of the amount so selected is computed by multiplying the amount of such excess by the percentage indicated on the same line in the second subcolumn of column 1 or 2. If the amount of the net gifts is less than \$5,000, the tax is computed at the rate indicated on the first line in the second subcolumn of the appropriate column. An illustration of the use of the table follows.

The tax according to the rate schedule in column 1 upon net gifts of \$62,500 is computed as follows:

Tax on \$60,000 (from first subcolumn of column 1)	\$7, 125
Tax on \$2,500 at 21 percent (from second subcolumn of column 1)	525
Tax on net gifts of \$62,500.....	7, 650

For examples showing computation of tax for the calendar years 1940, 1941, and 1943, including the defense tax for the years 1940 and 1941, see section 86.7.

TABLE FOR COMPUTING GIFT TAX

(A) Amount of net gifts equaling—	(B) Amount of net gifts not exceed- ing—	(1) In effect for calendar year 1942 and for each calendar year thereafter		(2) In effect for calendar years 1940 and 1941	
		Tax on amount in column (A)	Rate of tax on excess over amount in column (A)	Tax on amount in column (A)	Rate of tax on excess over amount in column (A)
			Percent		Percent
-----	\$5,000	-----	2½	-----	1½
\$5,000	10,000	\$112.50	5½	\$75	1½
10,000	20,000	375.00	8½	150	3
20,000	30,000	1,200.00	10½	450	4½
30,000	40,000	2,250.00	13½	900	6
40,000	50,000	3,600.00	16½	1,500	7½
50,000	60,000	5,250.00	18¾	2,250	9
60,000	70,000	7,125.00	21	3,150	9
70,000	100,000	9,225.00	21	4,050	10½
100,000	200,000	15,525.00	22½	7,200	12¾
200,000	250,000	38,025.00	22½	19,950	15
250,000	400,000	49,275.00	24	27,450	15
400,000	500,000	85,275.00	24	49,950	17½
500,000	600,000	109,275.00	26¼	67,200	17½
600,000	750,000	135,525.00	26¼	84,450	19½
750,000	800,000	174,900.00	27¾	113,700	19½
800,000	1,000,000	188,775.00	27¾	123,450	21¾
1,000,000	1,250,000	244,275.00	29½	166,950	24
1,250,000	1,500,000	317,400.00	31¾	226,950	24
1,500,000	2,000,000	396,150.00	33¾	286,950	26¼
2,000,000	2,500,000	564,900.00	36¾	418,200	28½
2,500,000	3,000,000	748,650.00	39¾	560,700	30¾
3,000,000	3,500,000	947,400.00	42	714,450	33
3,500,000	4,000,000	1,157,400.00	44½	879,450	35¼
4,000,000	4,500,000	1,378,650.00	47¼	1,055,700	37½
4,500,000	5,000,000	1,614,900.00	47¼	1,243,200	39¾
5,000,000	6,000,000	1,851,150.00	50¼	1,441,950	42
6,000,000	7,000,000	2,353,650.00	52½	1,861,950	44¼
7,000,000	8,000,000	2,878,650.00	54¾	2,304,450	45¾
8,000,000	9,000,000	3,426,150.00	57	2,761,950	47¼
9,000,000	10,000,000	3,996,150.00	57	3,234,450	48¾
10,000,000	20,000,000	4,566,150.00	57¾	3,721,950	50¼
20,000,000	50,000,000	10,341,150.00	57¾	8,746,950	51¾
50,000,000	-----	27,666,150.00	57¾	24,271,950	52½

SEC. 86.7 COMPUTATION OF TAX.—The first step in the determination of the tax is to ascertain the amount of the net gifts for the calendar year for which the return is being prepared. (For meaning of "net gifts," see section 86.9.) The second step is to ascertain the aggregate sum of the net gifts for each of the preceding calendar years, considering only gifts made after June 6, 1932. By the words "aggregate sum of the net gifts for each of the preceding calendar years" (aside from the amount of the specific exemption deductible) is meant the true and correct aggregate of such net gifts, not necessarily that returned

for such years and in respect to which tax was paid. In determining the aggregate sum of the net gifts for each of the preceding calendar years, the total amount of the specific exemption claimed and allowed for such preceding years should be deducted, except that if tax is being computed for the calendar year 1943 or for any calendar year thereafter such deduction cannot exceed \$30,000, or if the tax is being computed for the calendar year 1940, 1941, or 1942 such deduction cannot exceed \$40,000. (See section 86.12.) The third step is to add to the amount of net gifts for the calendar year for which the return is being prepared the aggregate sum of the net gifts for each of the preceding calendar years. The fourth step is to compute the tax upon the total amount of net gifts (as ascertained by the third step) by use of the rate schedule in force for the calendar year for which the return is being prepared. (See sections 86.5 and 86.6.) The fifth step is to compute a tax in accordance with the same rate schedule upon the aggregate sum of net gifts for each of the preceding calendar years only. The sixth step is to subtract from the amount of tax as computed in the fourth step the amount of tax as computed in the fifth step. The amount remaining after such subtraction is the tax for the calendar year for which the return is being prepared, except in the case of a return for the calendar year 1940 or 1941.

If the return is being prepared for the calendar year 1940 or 1941, the defense tax, imposed by subsection (d) of section 1001 of the Internal Revenue Code, as added by section 207 of the Revenue Act of 1940, must be computed. The defense tax was repealed by section 402 of the Revenue Act of 1941 and is not applicable to gifts made during the calendar year 1942 or any calendar year thereafter but remains in effect for the calendar years 1940 and 1941.

If the return is being prepared for the calendar year 1941, the defense tax is ascertained by computing 10 percent of the tax determined in the manner set forth in the first paragraph of this section. For such calendar year the total amount of tax payable is the amount determined in the manner explained in that paragraph plus the defense tax of 10 percent thereof.

In case of a return for the calendar year 1940, the amount of the defense tax to be added is that proportion of 10 percent of the tax computed in the manner indicated in the first paragraph of this section which the total amount of the gifts made after June 25, 1940 (determined after the allowance of any applicable exclusions authorized by section 1003(b)(2) of the Internal Revenue Code, or deductions for charitable, etc., gifts authorized by sections 1004(a)(2) and 1004(b) of the Internal Revenue Code, but without the allowance of the specific exemption or any portion thereof) bears to the total amount of gifts made during the calendar year determined in the same manner. In computing this ratio, the exclusion authorized by section 1003(b)(2)

with respect to gifts made to the same person both on or before and after June 25, 1940, is applied against the first such gifts made during the calendar year.

In case no reportable gifts were made during the preceding calendar years, considering only gifts made after June 6, 1932, the tax for the calendar year for which the return is being prepared is the tax computed in accordance with the rate schedule in force for such year upon the amount of the net gifts for such calendar year, plus the amount of the defense tax, if applicable.

Example (1) (showing computation of tax for calendar year 1943). A donor makes gifts (other than gifts of future interests in property) during the calendar year 1943 of \$30,000 to A and \$33,000 to B. After excluding \$6,000 for the two donees in accordance with section 1003(b)(3), the total amount of gifts made during that year is \$57,000. The specific exemption was previously exhausted and the amount of the net gifts for 1943 is \$57,000. The total amount of gifts made by the donor during the preceding years, after excluding \$5,000 for each donee for each calendar year in accordance with section 1003(b)(1), is computed as follows:

Calendar year 1934.....	\$120, 000
Calendar year 1935.....	25, 000

Total amount of gifts for preceding calendar years.....	145, 000
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The aggregate sum of the net gifts for the preceding calendar years, \$115,000, is determined by deducting a specific exemption of \$30,000 from \$145,000. The deduction for such specific exemption cannot exceed \$30,000, even though \$50,000 was allowed as the specific exemption in the computation of the tax applicable to the preceding years 1934 and 1935. See section 86.12. The computation of the tax for the calendar year 1943 is shown below:

1. Amount of net gifts for year.....	\$57, 000
2. Total amount of net gifts for preceding years.....	115, 000
3. Total net gifts.....	172, 000
4. Tax computed on item 3 (in accordance with rate schedule).....	31, 725
5. Tax computed on item 2 (in accordance with rate schedule).....	18, 900
6. Tax for year 1943 (item 4 minus item 5).....	12, 825

Example (2) (showing computation of defense tax for calendar year 1941). During the calendar year 1941 a resident donor makes the following gifts:

To daughter.....	\$44, 000
To son.....	14, 000
To a charitable organization.....	10, 000

The amount of his net gifts for preceding calendar years, subsequent to June 6, 1932, is \$50,000. Only \$25,000 of his specific exemption was claimed for such preceding years. The remaining \$15,000 of his specific exemption is claimed for the calendar year 1941. The amount of the net gifts for the calendar year 1941 is determined as follows:

Total gifts.....	\$68,000.00
Less exclusions under section 1003(b)(2) of the Internal Revenue Code	12,000.00
Total included amount of gifts for year.....	56,000.00
Total deductions for charitable gifts (\$10,000 less exclusion of \$4,000)	\$6,000
Specific exemption claimed.....	15,000
Total deductions	21,000.00
Amount of net gifts for year.....	35,000.00

The total amount of the tax payable for the calendar year 1941 is computed as follows:

1. Amount of net gifts for year.....	\$35,000.00
2. Total amount of net gifts for preceding years.....	50,000.00
3. Total net gifts.....	85,000.00
4. Tax computed on item 3 (in accordance with rate schedule).....	5,625.00
5. Tax computed on item 2 (in accordance with rate schedule).....	2,250.00
6. Tax on net gifts for year without addition of defense tax (item 4 minus item 5).....	3,375.00
7. Defense tax (10 percent of item 6).....	337.50
8. Total tax payable for year (item 6 plus item 7).....	3,712.50

Example (3) (showing computation of defense tax for calendar year 1940). The facts are the same as in the preceding example except that the remaining \$15,000 of the donor's specific exemption is claimed for the calendar year 1940 and the gifts to the daughter, son, and charitable organization were made during the calendar year 1940, as follows:

To daughter before June 26, 1940.....	\$44,000
To son after June 25, 1940.....	14,000
To charitable organization after June 25, 1940.....	10,000

The determination of the amount of the net gifts and the computation of the tax, without the addition of the defense tax, is the same as in the preceding example.

The computation of the defense tax and the total amount of the tax payable for the calendar year 1940 is shown as follows:

Total included amount of gifts for year, less amount deducted for charitable gift (\$56,000 minus \$6,000)	\$50,000. 00
Total included amount of gifts made after June 25, 1940, less amount deducted for charitable gift made after June 25, 1940 (\$16,000 minus \$6,000)	10,000. 00
10 percent of \$3,375, the amount of the tax without the addition of the defense tax	337. 50
Defense tax for 1940 $\left(\frac{10,000}{50,000} \times \$337.50 \right)$	67. 50
Total amount of tax payable for calendar year 1940 (\$3,375 plus \$67.50)	3,442. 50

SEC. 1002. TRANSFER FOR LESS THAN ADEQUATE AND FULL CONSIDERATION.

Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this chapter, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

SEC. 86.8 TRANSFERS FOR A CONSIDERATION IN MONEY OR MONEY'S WORTH.—Transfers reached by the statute are not confined to those only which, being without a valuable consideration, accord with the common law concept of gifts, but embrace as well sales, exchanges, and other dispositions of property for a consideration in money or money's worth to the extent that the value of the property transferred by the donor exceeds the value of the consideration given therefor. However, a sale, exchange, or other transfer of property made in the ordinary course of business (a transaction which is bona fide, at arm's length, and free from any donative intent), will be considered as made for an adequate and full consideration in money or money's worth. A consideration not reducible to a money value, as love and affection, promise of marriage, etc., is to be wholly disregarded, and the entire value of the property transferred constitutes the amount of the gift.

SEC. 1003. NET GIFTS. [AS ORIGINALLY ENACTED.]

(a) **GENERAL DEFINITION.**—The term "net gifts" means the total amount of gifts made during the calendar year, less the deductions provided in section 1004.

(b) EXCLUSIONS FROM GIFTS.

(1) **GIFTS PRIOR TO 1939.**—In the case of gifts (other than of future interests in property) made to any person by the donor during the calendar year 1938 and previous calendar years, the first \$5,000 of such gifts to such person shall not, for the purposes of subsection (a), be included in the total amount of gifts made during such year.

(2) **GIFTS AFTER 1938.**—In the case of gifts (other than gifts in trust or of future interests in property) made to any person by the donor during the calendar year 1939 and subsequent calendar years, the first \$4,000 of such gifts to such persons shall not, for the purposes of subsection (a), be included in the total amount of gifts made during such year.

SEC. 454. EXCLUSION FROM NET GIFTS REDUCED. [REVENUE ACT OF 1942, TITLE IV, PART II. EFFECTIVE FOR CALENDAR YEAR 1943 AND EACH CALENDAR YEAR THEREAFTER.]

Section 1003(b) (2) (relating to exclusion of gifts) is amended to read as follows:

“(2) **GIFTS AFTER 1938 AND PRIOR TO 1943.**—In the case of gifts (other than gifts in trust or of future interests in property) made to any person by the donor during the calendar year 1939 and subsequent calendar years prior to 1943, the first \$4,000 of such gifts to such person shall not, for the purposes of subsection (a), be included in the total amount of gifts made during such year.

“(3) **GIFTS AFTER 1942.**—In the case of gifts (other than gifts of future interests in property) made to any person by the donor during the calendar year 1943 and subsequent calendar years, the first \$3,000 of such gifts to such person shall not, for the purposes of subsection (a), be included in the total amount of gifts made during such year.”

SEC. 451. GIFTS TO WHICH AMENDMENTS APPLICABLE. [REVENUE ACT OF 1942, TITLE IV, PART II.]

Except as otherwise expressly provided, the amendments made by this Part shall be applicable only with respect to gifts made in the calendar year 1943, and succeeding calendar years.

SEC. 86.9 NET GIFTS.—The tax is computed upon the amount of the donor's net gifts (see sections 86.5, 86.6, and 86.7). The term “net gifts” means the “total amount of gifts” computed as provided in section 1003 (see section 86.10), less the deductions provided in section 1004. (See sections 86.12 and 86.13.)

SEC. 86.10 TOTAL AMOUNT OF GIFTS.—Except with respect to any gift of a future interest in property, the first \$3,000 of gifts made to any one donee during the calendar year 1943 or during any calendar year thereafter shall be excluded in determining the total amount of gifts for such calendar year. In the case of a gift in trust, the beneficiary of the trust is the donee of the gift. Except with respect to any gift in trust or of a future interest in property, the first \$4,000 of gifts made to any one donee during any one of the calendar years 1939 to 1942, inclusive, shall be excluded in determining the total amount of gifts for any such calendar year. Except with respect to any gift of a future interest in property, the first \$5,000 of gifts made to any one donee during the calendar year 1938 or during any calendar year prior thereto shall be excluded in determining the total amount of

gifts for such calendar year. The entire value of any gift of a future interest in property, and the entire value of any gift made by a transfer in trust during the calendar years 1939 to 1942, inclusive, must be included in the total amount of gifts for the calendar year in which such a gift is made.

SEC. 86.11 FUTURE INTERESTS IN PROPERTY.—No part of the value of a gift of a future interest may be excluded in determining the total amount of gifts made during the calendar year. "Future interests" is a legal term, and includes reversions, remainders, and other interests or estates, whether vested or contingent, and whether or not supported by a particular interest or estate, which are limited to commence in use, possession, or enjoyment at some future date or time. The term has no reference to such contractual rights as exist in a bond, note (though bearing no interest until maturity), or in a policy of life insurance, the obligations of which are to be discharged by payment in the future. But a future interest or interests in such contractual obligations may be created by the limitations contained in a trust or other instrument of transfer employed in effecting a gift. For the valuation of future interests, see section 86.19(g).

SEC. 1004. DEDUCTIONS.

In computing net gifts for the calendar year 1939 and preceding calendar years, there shall be allowed (except as otherwise provided in paragraph (1) of subsection (a)) such deductions as are provided for under the gift tax laws applicable to the years in which the gifts were made.

In computing net gifts for the calendar year 1940 and subsequent calendar years, there shall be allowed as deductions:

(a) RESIDENTS.—In the case of a citizen or resident—

(1) SPECIFIC EXEMPTION.—An exemption of \$40,000, less the aggregate of the amounts claimed and allowed as specific exemption in the computation of gift taxes for the calendar year 1932 and all calendar years intervening between that calendar year and the calendar year for which the tax is being computed under the laws applicable to such years. This exemption shall be applied in all computations in respect of the calendar year 1939 and previous calendar years for the purpose of computing the tax for the calendar year 1940 or any calendar year thereafter.

(2) CHARITABLE, ETC., GIFTS.—The amount of all gifts made during such year to or for the use of—

(A) the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(B) a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals; no part of the net earnings of which inures to the benefit of any private shareholder or individual,

and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation ;

(C) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals ;

(D) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual ;

(E) the special fund for vocational rehabilitation authorized by section 12 of the World War Veterans' Act, 1924, 43 Stat. 611 (U. S. C., title 38 § 440).

(b) **NONRESIDENTS.**—In the case of a nonresident not a citizen of the United States, the amount of all gifts made during such year to or for the use of—

(1) the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes ;

(2) a domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals ; no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation ;

(3) a trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation ; but only if such gifts are to be used within the United States exclusively for such purposes ;

(4) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used within the United States exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals ;

(5) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual ;

(6) the special fund for vocational rehabilitation authorized by section 12 of the World War Veterans' Act, 1924, 43 Stat. 611 (U. S. C., Title 38, § 440).

(c) **EXTENT OF DEDUCTIONS.**—The deductions provided in subsection (a) (2) or (b) shall be allowed only to the extent that the gifts therein specified are included in the amount of gifts against which such deductions are applied.

SEC. 455. SPECIFIC EXEMPTION OF GIFTS REDUCED. [REVENUE ACT OF 1942, TITLE IV, PART II. EFFECTIVE FOR CALENDAR YEAR 1943 AND EACH CALENDAR YEAR THEREAFTER.]

That part of section 1004 which precedes paragraph (2) of subsection (a) is amended to read as follows:

"SEC. 1004. DEDUCTIONS.

"In computing net gifts for the calendar year 1942 and preceding calendar years, there shall be allowed (except as otherwise provided in paragraph (1) of subsection (a)) such deductions as are provided for under the gift tax laws applicable to the years in which the gifts were made.

"In computing net gifts for the calendar year 1943 and subsequent calendar years, there shall be allowed as deductions:

"(a) **RESIDENTS.**—In the case of a citizen or resident—

"(1) **SPECIFIC EXEMPTION.**—An exemption of \$30,000, less the aggregate of the amounts claimed and allowed as specific exemption in the computation of gift taxes for the calendar year 1932 and all calendar years intervening between that calendar year and the calendar year for which the tax is being computed under the laws applicable to such years. This exemption shall be applied in all computations in respect of the calendar year 1942 and previous calendar years for the purpose of computing the tax for the calendar year 1943 or any calendar year thereafter."

SEC. 451. GIFTS TO WHICH AMENDMENTS APPLICABLE. [REVENUE ACT OF 1942, TITLE IV, PART II.]

Except as otherwise expressly provided, the amendments made by this Part shall be applicable only with respect to gifts made in the calendar year 1943, and succeeding calendar years.

SEC. 86.12 SPECIFIC EXEMPTION.—In determining the amount of net gifts for the calendar year there may be deducted, if the donor was a citizen or resident of the United States at the time the gifts were made, a specific exemption of \$30,000 (\$40,000 if the calendar year is 1940, 1941, or 1942), less the sum of the amounts claimed and allowed as an exemption in prior calendar years. The exemption, at the option of the donor, may be taken in its entirety in a single year, or be spread over a period of years in such amounts as he sees fit, but after the limit has been reached no further exemption is allowable. In determining the aggregate sum of the net gifts for the preceding calendar years (see section 86.7), the total amount of the specific exemption claimed and allowed for such preceding years should be deducted, except that if tax is being computed for the calendar year 1943 or for any calendar year thereafter such deduction cannot exceed \$30,000, or if the tax is being computed for the calendar year 1940, 1941, or 1942, such deduction cannot exceed \$40,000. The specific exemption is authorized only in the case of a citizen or resident of the United

States. A donor who was a nonresident not a citizen of the United States at the time of the gift or gifts is not entitled to this exemption.

SEC. 86.13 CHARITABLE, ETC., GIFTS.—In determining the amount of net gifts of a given calendar year, in the case of a donor who was a citizen or resident of the United States at the time when the gifts were made, there may be deducted the amount of such gifts as were to or for the use of (A) the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes; or (B) any corporation, trust, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, provided no part of the net earnings of such organization inures to the benefit of any private shareholder or individual, and no substantial part of its activities is carrying on propaganda, or otherwise attempting, to influence legislation; or (C) a fraternal society, order, or association, operating under the lodge system, provided such gifts are to be used by such fraternal society, order, or association exclusively for one or more of the purposes enumerated in (B); or (D) any organization of war veterans or auxiliary unit or society thereof if such organization, auxiliary unit, or society thereof is organized in the United States or any of its possessions, and if no part of its net earnings inures to the benefit of any private shareholder or individual. The special fund for vocational rehabilitation authorized by section 12 of the World War Veterans' Act, 1924, referred to in section 1004, has been discontinued. See notes, 38 U. S. C. 440, 531–539.

In case the donor was a nonresident not a citizen of the United States at the time the gifts were made, the deduction of the amount of charitable, etc., gifts is governed by the same rules as those applying to similar gifts made by citizens or residents, subject, however, to the two following exceptions: (1) If the gift be made to or for the use of a corporation, such corporation must be one created or organized under the laws of the United States or of any State or Territory thereof; and (2) if made to or for the use of a trust, or community chest, fund, or foundation, or a fraternal society, order, or association, operating under the lodge system, the gift must be for use within the United States exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals.

The deduction is not limited in the case of donors who were citizens or residents to gifts to or for the use of domestic corporations, or for use within the United States when made to a trust, or community chest, fund, or foundation, or a fraternal society, order, or association, operating under the lodge system.

If money or other property is so given that the income is, for the duration of a life or a term of years, to be paid to the donor or other individual, or is to be used for a purpose not described in section 1004 (a) (2) or (b), and the property is then to be devoted exclusively to some one or more of the uses described in section 1004 (a) (2) or (b), only the present worth of the remainder is deductible. To determine the present worth or value of such remainder (that is, its value as of the date of the gift), the amount of the money or the value of the property transferred should be multiplied by the appropriate factor in column 3 of Table A or B, a part of section 86.19.

SEC. 86.14 RELIGIOUS, CHARITABLE, SCIENTIFIC, LITERARY, AND EDUCATIONAL ORGANIZATIONS.—The corporation, or trust, or community chest, fund, or foundation to which a gift is made must meet three tests to entitle the donor to deduct the amount of the gift: (1) It must be organized and operated exclusively for one or more of the purposes specified in the statute; (2) it must not by a substantial part of its activities carry on propaganda, or otherwise attempt, to influence legislation; and (3) no part of its net earnings shall inure to the benefit of private shareholders or individuals.

The donor is not deprived of the right to deduct an amount equal to the value of property so transferred by reason of the fact that private individuals are the recipients of the benefits which the organization dispenses. Such right is lost, however, where any part of the net earnings of the organization inures to the benefit of a private shareholder or individual.

SEC. 86.15 PROOF REQUIRED.—In order to prove the right to this deduction, the donor must submit such documents or evidence as may be requested by the Commissioner.

SEC. 86.16 CHARITABLE, ETC., GIFTS WITH POWER TO DIVERT.—If a fraternal society, order, or association, operating under the lodge system, is empowered to divert a part of the property or fund transferred by gift to a use or purpose which would have rendered it, to the extent that it is subject to such power, not deductible had it been directly transferred by the donor for such use or purpose, deduction will be limited to that part of the property or fund which is not subject to the exercise of the power.

SEC. 1005. GIFTS MADE IN PROPERTY.

If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.

SEC. 86.17 GIFTS MADE IN PROPERTY.—A gift made in property is subject to the tax in the same manner as a gift of cash, and the amount of the gift is the value of the property at the date of the gift.

SEC. 86.18 SITUS OF PROPERTY.—The statute imposes a tax upon gifts made by citizens of the United States, residents or nonresidents

thereof, and upon those made by residents of the United States, whether or not citizens, irrespective of whether the property transferred (real or personal, tangible or intangible) be situated within or without the United States. But gifts by nonresidents of the United States who are not citizens thereof (see section 86.4) are subject to tax only if the property transferred is, at the time of the transfer, situated within the United States.

Real estate, tangible personal property, and the written evidence of intangible personal property which is treated as being the property itself are within the United States if physically situated therein. For example, a bond for the payment of money is not within the United States unless physically situated therein. Stock of a domestic corporation, however, constitutes property within the United States, irrespective of where the certificates thereof are physically located. (See section 1030(b) and section 86.74.) Intangible personal property the written evidence of which is not treated as being the property itself constitutes property within the United States if consisting of a property right issuing from or enforceable against a resident of the United States or a domestic corporation (public or private), irrespective of where such written evidence is physically located.

Paragraph (9) of section 3797(a) of the Internal Revenue Code defines the term "United States," when used in a geographical sense, as including only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

SEC. 86.19 VALUATION OF PROPERTY.—(a) *General*.—The statute provides that if the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift. The value of the property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. The value of a particular kind of property is not to be determined by a forced sale price. Such value is to be determined by ascertaining as a basis the fair market value at the time of the gift of each unit of the property. For example, in the case of shares of stock or bonds, such unit of property is a share or a bond. All relevant facts and elements of value as of the time of the gift should be considered.

(b) *Real estate*.—In returning a gift of real estate, the local assessed value thereof should not be returned as the value of the gift unless such value represents the fair market value of the property as of the date of the gift. (See section 86.24 for manner of listing and describing real estate in returns.)

(c) *Stocks and bonds*.—The value at the date of the gift in the case of stocks and bonds, within the meaning of the statute, is the fair market value per share or bond on such date.

In the case of stocks and bonds listed on a stock exchange, the mean between the highest and lowest quoted selling prices on the date of the gift shall be considered as the fair market value per share or bond. If there were no sales on the date of the gift, such value shall be determined by taking the mean between the highest and lowest sales on the nearest date before and the nearest date after the date of the gift (both such nearest dates being within a reasonable period), and by prorating the difference between such mean prices to the date of the gift, and by adding or subtracting, as the case may be, such prorated portion of the difference to or from the mean price obtaining on such nearest date before the date of the gift. For example, assume that sales of stock nearest the date of the gift (June 15) occurred two days before (June 13) and three days after (June 18) and that on such days the mean sale prices per share were \$10 and \$15, respectively. The price of \$12 shall be taken as representing the fair market value of a share of such stock as of the date of the gift. If, however, on June 13 and June 18 the mean sale prices per share were \$15 and \$10, respectively, the price of \$13 shall be taken as representing the fair market value of a share of such stock as of the date of the gift. If the security was listed on more than one exchange, the records of the exchange where the security is principally dealt in should be employed. In valuing listed stocks and bonds the donor should observe care to consult accurate records to obtain values as of the date of the gift.

In the case of stocks and bonds which are not listed upon an exchange, but are dealt in through brokers, or have a market, the fair market value shall be determined by taking the mean between the highest and lowest selling prices as of the date of the gift; or, if there were no sales on that date, such value shall be determined by taking the mean between the highest and lowest sales on the nearest date before and the nearest date after the date of the gift (both such nearest dates being within a reasonable period), and by prorating the difference between such mean prices to the date of the gift, and by adding or subtracting, as the case may be, such prorated portion of the difference to or from the mean price obtaining on such nearest date before the date of the gift. If quotations are obtained from brokers, or evidence as to the sale of securities is obtained from the officers of the issuing companies, the donor should preserve in his files the letters furnishing such quotations or evidence of sale for inspection when the return is verified by an investigating officer.

If actual sales are not available during a reasonable period beginning before and ending after the date of the gift, the fair market value may be determined by taking the mean between the bona fide bid and asked prices on the nearest date before and the nearest date after the date of the gift (both such nearest dates being within a reasonable period), and by prorating the difference between such mean prices to the date of the gift, and by adding or subtracting, as the case may be, such prorated portion of the difference to or from the mean price obtaining on such nearest date before the date of the gift.

If actual sale prices or quoted bona fide bid and asked prices are available on a date within a reasonable period prior to the date of the gift, and if no actual sale prices or bona fide bid and asked prices are available on a date within a reasonable period after the date of the gift, or vice versa, then the mean between such highest and lowest available sale prices or bid and asked prices may be taken as the value.

If actual sales or bona fide bid and asked prices are not available, then, in the case of corporate or other bonds, the value is to be arrived at by giving consideration to the soundness of the security, the interest yield, the date of maturity, and other relevant factors, and, in the case of shares of stock, upon the basis of the company's net worth, earning power, dividend-paying capacity, and all other relevant factors having a bearing upon the value of the stock. Complete financial and other data upon which the donor bases his valuation should be submitted with the return.

In cases in which it is established that the value per bond or share of any security determined on the basis of selling or bid and asked prices as herein provided does not reflect the fair market value thereof, then some reasonable modification of such basis or other relevant facts and elements of value shall be considered in determining fair market value.

(d) *Interest in business.*—Care should be taken to arrive at an accurate valuation of any business which the donor transfers without an adequate and full consideration in money or money's worth, whether the interest transferred is that of a partner or of a proprietor. A fair appraisal as of the date of the gift should be made of all the assets of the business, tangible and intangible, including good will, and the business should be given a net value equal to the amount which a willing purchaser, whether an individual or a corporation, would pay therefor to a willing seller in view of the net value of the assets of the business and its demonstrated earning capacity. Special attention should be given to fixing an adequate figure for the value of the good will of the business.

The factors hereinbefore stated relative to the valuation of other property, if applicable, will be considered in determining the valuation of a proprietary or partnership interest in the business. All evidence bearing upon such valuation should be submitted with the return, including copies of reports in any case in which examinations of the business have been made by accountants, engineers, or any technical experts as of or near the date of the gift.

(e) *Notes, secured and unsecured.*—The value of notes, whether secured or unsecured, will be presumed to be the amount of unpaid principal, plus accrued interest to the date of the gift, unless the donor establishes a lower value. Unless returned at face value, plus accrued interest, it must be shown by satisfactory evidence that the note is worth less than the unpaid amount because of the interest rate, or date of maturity, or other cause, or that the note is uncollectible in part by reason of the insolvency of the party or parties liable, or for other cause, and that the property, if any, pledged or mortgaged as security is insufficient to satisfy it.

(f) *Annuities, life estates, remainders and reversions.*—(1) *Annuities—General.*—For valuation of annuities purchased from life insurance companies or other companies regularly engaged in issuing annuity contracts, see (i) under this section. In case the donor creates a trust under which a specified annuity is payable to the donee, the value of such gift should be determined by using Table A or Table B, whichever is applicable, shown at the end of this section. If the annuity is payable at the end of each annual period, the factor is obtained directly from the table. If the annuity is payable for the life of an individual, the amount payable annually should be multiplied by the figure in column 2 of Table A opposite the number of years in column 1 of such table nearest the age of the individual (as of the date of the gift) whose life measures the duration of the annuity, or if payable for a definite number of years the amount payable annually should be multiplied by the figure in column 2 of Table B opposite the number of years in column 1 of such table.

Example (1). The donee is made the beneficiary of an annuity of \$10,000 payable at the end of annual periods during his life. The age of the donee at the date of the gift is 40 years and 8 months. By reference to Table A, it is found that the figure in column 2 opposite 41 years, the number nearest to the donee's age, is 14.86102. The value of the gift is, therefore, \$148,610.20 (\$10,000 multiplied by 14.86102).

Example (2). The donor was entitled to receive an annuity of \$10,000 a year payable at the end of annual periods throughout a term

of 20 years; the donor, when 15 years have elapsed, makes a gift thereof to his son. By reference to Table B, it is found that the figure in column 2 opposite 5 years, the unexpired portion of the 20-year period, is 4.45182. The present worth of the annuity is, therefore, \$44,518.20 (\$10,000 multiplied by 4.45182).

(2) *Annuities payable at end of semiannual, quarterly, or monthly periods.*—If the annuity is payable semiannually, quarterly, or monthly, the value should be determined by multiplying the aggregate amount to be paid within a year by the figure in column 2 of Table A opposite the number of years in column 1 nearest the actual age of the person whose life measures the annuity, or the figure in column 2 of Table B opposite the number of years the annuity is payable, as the case may be, and then multiplying the product by 1.01820 for monthly payments, by 1.01488 for quarterly payments, or by 1.00990 for semiannual payments.

Example. If, in example (1) given above under (1) *Annuities—General*, the annuity is payable semiannually, the factor, 14.86102, should be multiplied by 1.00990 and the product multiplied by \$10,000. The value of the gift is, therefore, \$150,081.44 ($\$10,000 \times 14.86102 \times 1.00990$).

(3) *Annuities payable at beginning of annual, semiannual, quarterly, or monthly periods.*—(A) *Annuity for life.*—If the first payment of an annuity for the life of an individual is to be paid at once, the value of the annuity is the sum of the first payment plus the present worth of a similar annuity the first payment of which is not to be made until the end of the first period.

Example. The donee is made the beneficiary for life of an annuity of \$50 a month payable from the income of a trust, subject to the right reserved by the donor to cause the annuity to be paid for his own benefit or for the benefit of another. On the day a payment is due, the donor relinquishes his reserved power. The donee is then 50 years of age. The value of the gift is \$50 plus the product of $\$50 \times 12 \times 12.47032$ (see Table A) $\times 1.01820$, or \$7,668.37 [$\50 plus $(\$50 \times 12 \times 12.47032 \times 1.01820)$].

(B) *Annuity for term of years.*—If the first payment of an annuity for a definite number of years is to be paid at once, the applicable factor is the product of the factor shown in Table B multiplied by 1.02154 for monthly payments, by 1.02488 for quarterly payments, by 1.02990 for semiannual payments, or by 1.04 for annual payments.

Example. The donee is the beneficiary of an annuity of \$50 a month subject to a reserved right in the donor to cause the annuity or the cash value thereof to be paid for his own benefit or for the benefit of another.

On the day a payment is due, the donor relinquishes his power. There are 300 payments to be made covering a period of 25 years, including the payment due. The value of the gift is the product of $\$50 \times 12 \times 15.62208$ (factor for 25 years, Table B) $\times 1.02154$, or $\$9,575.15$ ($\$50 \times 12 \times 15.62208 \times 1.02154$).

(4) *Actuarial calculations by Bureau.*—If in the case of a completed gift an annuity is to be paid during the life of an individual and in any event for a definite number of years, or for more than one life, or in any other manner rendering inapplicable both Table A and Table B, the case may be stated to the Commissioner, who will thereupon furnish the applicable factor. In making such calculations when life interests or remainders upon life interests are involved, use will be made of the Actuaries' or Combined Experience Table of Mortality, as extended (that being the basis of Table A), with interest at 4 percent per annum compounded annually.

(5) *Life estates, terms for years—Hypothetical annuity.*—If the gift consists of the donor's right for life or for the life of another person, or for a term of years, either to receive the income of certain property or to use nonincome-producing property, a hypothetical annuity at the rate of 4 percent of the value of the property should be made the basis of the calculation. A provision for the payment of income in semiannual, quarterly, or monthly installments does not affect the value to be assigned to the life interest.

(6) *Remainders or reversionary interests.*—If the gift is of a remainder or reversionary interest subject to an outstanding life estate, the value of the gift will be obtained by multiplying the value of the property at the date of the gift by the figure in column 3 of Table A opposite the number of years nearest to the age of the life tenant. In case the remainder or reversion is to take effect at the end of a term of years, Table B should be used.

Example. The donor transferred by gift property worth \$50,000 which he was entitled to receive upon the death of his brother, to whom the income for life had been bequeathed. The brother at the date of the gift was 31 years of age. By reference to Table A, it is found that the figure in column 3 opposite 31 years is 0.31262. The value of the gift is, therefore, \$15,631 ($\$50,000 \times 0.31262$).

(g) *Transfers conditioned upon survivorship.*—If A, without retaining a power to revoke the trust or to change the beneficial interests, transfers property in trust whereby B is to receive the income therefrom for life and at his death the trust is to terminate and the corpus is to be returned to A provided A survives but if A predeceases B the corpus is to pass to C, A consummates a gift of such property less the present value of his right to the corpus should he survive the life tenant. The

value of such gift is to be determined in accordance with the Actuaries' or Combined Experience Table of Mortality, as extended.

A case involving the value of the right of survivorship (provided the gift is completed and not merely proposed or hypothetical) may be submitted to the Commissioner, who will furnish the applicable factor, computed in accordance with recognized actuarial principles.

(h) *Tenancies by the entirety*.—If either a husband or his wife purchases property and causes the title thereto to be conveyed to themselves as tenants by the entirety, or if either causes to be created such a tenancy in property already owned by him or her, and under the law of the jurisdiction governing the rights of the spouses with respect to the property neither of them may, acting alone, defeat the right of the survivor of them to the whole of the property, the transfer effects a gift from the spouse owning the property at the time of the creation of the tenancy or who furnished the consideration in the purchase of the property. The value of the gift is the value of such property less the value of the right, if any, of the donor spouse to the income or other enjoyment of the property, or share thereof, during the joint lives of the spouses, and the value of the right of the donor spouse to the whole of the property should he or she be the survivor of them. The value of each of such rights is to be determined in accordance with the Actuaries' or Combined Experience Table of Mortality, as extended.

A case of this character (provided the gift is completed and not merely proposed or hypothetical) may be submitted to the Commissioner, who will, in accordance with recognized actuarial principles, compute the applicable factor to be used in determining such value, and will advise the donor of the factor.

(i) *Life insurance and annuity contracts*.—The value of a life insurance contract or of a contract for the payment of an annuity issued by a company regularly engaged in the selling of contracts of that character is established through the sale of the particular contract by the company, or through the sale by the company of comparable contracts. As valuation through sale of comparable contracts is not readily ascertainable when the gift is of a contract which has been in force for some time and on which further premium payments are to be made, the value may be approximated, unless because of the unusual nature of the contract such approximation is not reasonably close to the full value, by adding to the interpolated terminal reserve at the date of the gift the proportionate part of the gross premium last paid before the date of the gift which covers the period extending beyond that date.

The examples given below, so far as relating to life insurance contracts, are of gifts of such contracts on which there are no accrued dividends or outstanding indebtedness.

Example (1). A donor purchases from a life insurance company for the benefit of another a life insurance contract or a contract for the payment of an annuity; the value of the gift is the cost of the contract.

Example (2). An annuitant, having purchased from a life insurance company a single payment annuity contract by the terms of which he was entitled to receive payments of \$1,200 annually for the duration of his life, five years subsequent to such purchase, and when of the age of 50 years, gratuitously assigns the contract. The value of the gift is the amount which the company would charge for an annuity contract providing for the payment of \$1,200 annually for the life of a person 50 years of age.

Example (3). A donor owning a life insurance policy on which no further payments are to be made to the company (e. g., a single premium policy or paid-up policy) makes a gift of the contract. The value of the gift is the amount which the company would charge for a single premium contract of the same specified amount on the life of a person of the age of the insured.

Example (4). A gift is made four months after the last premium due date of an ordinary life insurance policy issued nine years and four months prior to the gift thereof by the insured, who was 35 years of age at date of issue. The gross annual premium is \$2,811. The computation follows:

Terminal reserve at end of tenth year.....	\$14, 601. 00
Terminal reserve at end of ninth year.....	12, 965. 00
Increase.....	1, 636. 00
One-third of such increase (the gift having been made four months following the last preceding premium due date), is.....	545. 33
Terminal reserve at end of ninth year.....	12, 965. 00
Interpolated terminal reserve at date of gift.....	13, 510. 33
Two-thirds of gross premium (\$2,811).....	1, 874. 00
Value of the gift.....	15, 384. 33

(j) *Other property.*—Any property not specifically treated in this section should be valued in accordance with the rule laid down under (a) hereof.

TABLE A

Table, single life, 4 percent, showing the present worth of an annuity, or a life interest, and of a reversionary interest

1	2	3	1	2	3
Age	Annuity, or present value of \$1 due at the end of each year during the life of a person of specified age	Reversion, or present value of \$1 due at the end of the year of death of a person of specified age	Age	Annuity, or present value of \$1 due at the end of each year during the life of a person of specified age	Reversion, or present value of \$1 due at the end of the year of death of a person of specified age
0	<i>Annuity</i> \$14. 72829	<i>Reversion</i> \$0. 39507	51	<i>Annuity</i> \$12. 17919	<i>Reversion</i> \$0. 49311
1	17. 30771	. 29586	52	11. 88408	. 50446
2	18. 69578	. 24247	53	11. 58531	. 51595
3	19. 15901	. 22465	54	11. 28325	. 52757
4	19. 41226	. 21491	55	10. 97789	. 53931
5	19. 55301	. 20950	56	10. 66982	. 55116
6	19. 61731	. 20703	57	10. 35931	. 56310
7	19. 62502	. 20673	58	10. 04630	. 57514
8	19. 61097	. 20727	59	9. 73131	. 58726
9	19. 53413	. 21022	60	9. 41474	. 59943
10	19. 45359	. 21332	61	9. 09765	. 61163
11	19. 36943	. 21656	62	8. 78052	. 62383
12	19. 28184	. 21993	63	8. 46412	. 63600
13	19. 19065	. 22344	64	8. 14888	. 64812
14	19. 09590	. 22708	65	7. 83552	. 66017
15	18. 99764	. 23086	66	7. 52476	. 67212
16	18. 89569	. 23478	67	7. 21699	. 68397
17	18. 79010	. 23884	68	6. 91298	. 69565
18	18. 68070	. 24305	69	6. 61301	. 70719
19	18. 56751	. 24740	70	6. 31716	. 71857
20	18. 45038	. 25191	71	6. 02612	. 72976
21	18. 32932	. 25656	72	5. 74003	. 74077
22	18. 20416	. 26138	73	5. 45928	. 75157
23	18. 07471	. 26636	74	5. 18402	. 76215
24	17. 94097	. 27150	75	4. 91463	. 77251
25	17. 80274	. 27682	76	4. 65125	. 78264
26	17. 65984	. 28231	77	4. 39383	. 79254
27	17. 51224	. 28799	78	4. 14286	. 80220
28	17. 35968	. 29386	79	3. 89858	. 81159
29	17. 20225	. 29991	80	3. 66071	. 82074
30	17. 03961	. 30617	81	3. 42900	. 82965
31	16. 87176	. 31262	82	3. 20258	. 83836
32	16. 69846	. 31929	83	2. 98024	. 84691
33	16. 51964	. 32617	84	2. 76106	. 85534
34	16. 33503	. 33327	85	2. 54366	. 86371
35	16. 14437	. 34060	86	2. 32795	. 87200
36	15. 94755	. 34817	87	2. 11384	. 88024
37	15. 74427	. 35599	88	1. 90115	. 88842
38	15. 53421	. 36407	89	1. 69107	. 89650
39	15. 31722	. 37241	90	1. 48540	. 90441
40	15. 09295	. 38104	91	1. 28432	. 91214
41	14. 86102	. 38996	92	1. 09024	. 91961
42	14. 62122	. 39918	93	. 90647	. 92667
43	14. 37356	. 40871	94	. 73687	. 93320
44	14. 11860	. 41852	95	. 58435	. 93906
45	13. 85713	. 42857	96	. 46182	. 94378
46	13. 58958	. 43886	97	. 36698	. 94742
47	13. 31698	. 44935	98	. 24038	. 95229
48	13. 03942	. 46002	99	. 00000	. 96154
49	12. 75716	. 47088			
50	12. 47032	. 48191			

TABLE B

Table showing the present worth at 4 percent of an annuity for a term certain, and of a reversionary interest postponed for a term certain

1	2	3	1	2	3
Number of years	Present worth of an annuity of \$1, payable at the end of each year, for a certain number of years	Present worth of \$1, payable at the end of a certain number of years	Number of years	Present worth of an annuity of \$1, payable at the end of each year, for a certain number of years	Present worth of \$1, payable at the end of a certain number of years
	<i>Annuity</i>	<i>Reversion</i>		<i>Annuity</i>	<i>Reversion</i>
1	\$0. 96154	\$0. 961538	16	\$11. 65229	\$0. 533908
2	1. 88609	. 924556	17	12. 16567	. 513373
3	2. 77509	. 888996	18	12. 65929	. 493628
4	3. 62989	. 854804	19	13. 13394	. 474642
5	4. 45182	. 821927	20	13. 59032	. 456387
6	5. 24214	. 790314	21	14. 02916	. 438834
7	6. 00205	. 759918	22	14. 45111	. 421955
8	6. 73274	. 730690	23	14. 85684	. 405726
9	7. 43533	. 702587	24	15. 24696	. 390121
10	8. 11089	. 675564	25	15. 62208	. 375117
11	8. 76047	. 649581	26	15. 98277	. 360689
12	9. 38507	. 624597	27	16. 32958	. 346816
13	9. 98565	. 600574	28	16. 66306	. 333477
14	10. 56312	. 577475	29	16. 98371	. 320651
15	11. 11839	. 555265	30	17. 29203	. 308319

SEC. 1006. RETURNS.

(a) **REQUIREMENT.**—Any individual who within the calendar year 1940 or any calendar year thereafter makes any transfers by gift (except those which under section 1003 are not to be included in the total amount of gifts for such year) shall make a return under oath in duplicate. The return shall set forth (1) each gift made during the calendar year which under section 1003 is to be included in computing net gifts; (2) the deductions claimed and allowable under section 1004; (3) the net gifts for each of the preceding calendar years; and (4) such further information as may be required by regulations made pursuant to law.

(b) **TIME AND PLACE FOR FILING.**—The return shall be filed on or before the 15th day of March following the close of the calendar year with the collector for the district in which is located the legal residence of the donor, or if he has no legal residence in the United States, then (unless the Commissioner designates another district) with the collector at Baltimore, Maryland.

SEC. 86.20 PERSONS REQUIRED TO FILE RETURN.—Any individual citizen or resident of the United States who within the calendar year 1943, or within any calendar year thereafter, makes a transfer or transfers by gift to any one donee of a value or total value in excess of \$3,000 (or regardless of value in the case of a gift of a future interest in property) must file a gift tax return for such year on Form 709. Any individual citizen or resident of the United States who within the calendar year 1940, 1941, or 1942 makes a transfer or transfers by gift to any one donee of a value or total value in excess of \$4,000 (or regardless of value in the case of a gift in trust or of a future interest

in property) must file a gift tax return for such year on Form 709. A nonresident not a citizen of the United States who made such a gift must also file a return on Form 709 if the subject of the gift consisted of property situated in the United States. The return is required even though because of authorized deductions (the specific exemption, in the case of a citizen or resident, and charitable, public, and similar gifts) no tax may be payable. Individuals only are required to file returns as donors, and not trusts, estates, partnerships, or corporations.

If the donor dies before filing his return, the executor of his will or the administrator of his estate shall file the return. If the donor becomes legally incompetent before filing his return, his guardian or committee shall file the return.

The return shall not be made by an agent unless by reason of illness, absence, or nonresidence, the person liable for the return is unable to make it within the time prescribed. Mere convenience is not sufficient reason for authorizing an agent to make the return. If by reason of illness, absence, or nonresidence, a return is made by an agent, such return must be ratified by the donor or other person liable for its filing within a reasonable time after such person becomes able to do so; otherwise the return filed by the agent will not be considered the return required by the statute. Supplemental data may be submitted at the time of ratification. The ratification must be in the form of an affidavit, filed with the Commissioner, and must specifically state that the return made by the agent has been carefully examined and that the affiant ratifies such return as his own. If a return is signed by an agent, a statement fully explaining the inability of the donor must accompany the return.

SEC. 86.21 DONEES AND TRUSTEES REQUIRED TO FILE NOTICE OF GIFTS.—An information return or notice on Form 710 must be filed by every donee or trustee (except in the case of an organization receiving a gift for a public, charitable, etc., purpose as hereinafter explained) to whom is transferred in any one calendar year property by gift for which, as set forth in section 86.20, the donor is required to file a gift tax return. An organization which has been held by the Commissioner to come within the purview of section 1004(a)(2) of the Internal Revenue Code or the corresponding provision of the Revenue Act of 1932 need not file such information return if the gift was made by a citizen or resident of the United States. An organization which has been held by the Commissioner to come within the purview of section 1004(b) of the Internal Revenue Code or the corresponding provision of the Revenue Act of 1932 need not file such information return if the gift was made by a nonresident not a citizen of the United States. Copies of this form may be obtained from any United States collector of internal revenue upon application. When a gift is made in trust notice thereof should be filed by either the beneficiary of the trust

or the trustee, but in such case one notice only is required. If the donor retains a power over transferred property, the notice (which is for information purposes only) should be filed even though it is considered that the retention of the power renders the transfer wholly incomplete as a gift within the meaning of the statute. The notice shall be filed in duplicate with the collector for the district in which the donor resides, or with the Commissioner of Internal Revenue at Washington, D. C., on or before the 15th day of March following the close of the calendar year in which the transfer was made. The notice shall disclose the following information: (1) Name and address of donor, (2) date of transfer, (3) a general description of the property transferred, and (4) the approximate value thereof at the date of the transfer. If the donee dies or becomes legally incompetent, his executor, administrator, guardian, or committee, as the case may be, shall file such notice as would be required of the donee.

SEC. 86.22 TIME AND PLACE OF FILING RETURN.—Gift tax returns must be filed in duplicate on or before the 15th day of March following the close of the calendar year in which gifts were made. The return shall be filed with the collector of internal revenue for the district in which is located the legal residence of the donor, or, if he has no legal residence in the United States, then, unless the Commissioner otherwise designates, with the collector of internal revenue at Baltimore, Md. When the due date for the filing of the return falls on a Sunday or a legal holiday, the due date will be the day next following which is not a Sunday or a legal holiday. If placed in the mails, the return should be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the date on which the return is required to be filed. If a return is made and so placed in the mails, properly addressed, and postage paid, in ample time to reach the office of the collector on or before the due date, no penalty will attach should the return not be actually received by such officer until subsequent to that date. As to additions to the tax in the case of failure to file a return within the period prescribed, see section 3612(d) (1) and section 86.50.

Section 3634 provides:

If the failure to file a return (other than a return of income tax) or list at the time prescribed by law or by regulation made under authority of law is due to sickness or absence, the collector may allow such further time, not exceeding thirty days, for making or filing the return or list as he deems proper.

No such extension of time may be granted unless the application therefor is received by the collector prior to the expiration of the period for which the extension is requested and authorized. An extension of time for filing the return does not in itself operate to extend the time for the payment of the tax.

SEC. 86.23 FORM OF RETURN.—The return must be made on Form 709, copies of which will be supplied by the collector upon application. The return must be filed in duplicate and under oath. If the return is filed for the calendar year 1943, or for any calendar year thereafter, it must set forth every transfer by gift to any one donee during such calendar year, as to which the donor is required to make a return under section 86.20, which singly or in the aggregate exceeds \$3,000 in value (or regardless of value in the case of a gift of a future interest in property). A return filed for the calendar year 1940, 1941, or 1942 must set forth every transfer by gift to any one donee during such calendar year, as to which a return is required under section 86.20, which singly or in the aggregate exceeds \$4,000 in value (or regardless of value in the case of a gift in trust or of a future interest in property). The return shall also set forth the fair market value of all such gifts not made in money, including gifts resulting from sales and exchanges of property made for less than an adequate and full consideration in money or money's worth (see section 86.8), giving the fair market value of the property sold or exchanged and that of the consideration received by the donor, both as of the date of sale or exchange. The return shall also contain information with respect to transfers which the donor considers incomplete gifts because of his retained power over such transferred property (see section 86.3). The deductions claimed must also be fully set forth. The instructions printed on the form of return should be carefully followed. All documents and vouchers used in preparing the return should be retained by the donor so as to be available for inspection by representatives of the Bureau whenever required. Certified or verified copies of all documents required by the instructions printed on the form, or any documents which the donor may desire to submit, should be filed with the return.

In addition to the list of gifts made during the calendar year for which the return is filed, the return shall set forth for each of the preceding calendar years both the amount of gifts (other than charitable, public, and similar gifts) and the amount of specific exemption claimed and allowed.

The tax, if any, for the calendar year for which the return is filed shall be computed and entered on the return, as provided by the form. (See section 86.7.)

SEC. 86.24 DESCRIPTION OF PROPERTY LISTED ON RETURN.—In listing upon the return the property comprising the gifts made during the calendar year, the description thereof should be such that the property may be readily identified. Thus, there should be given for each parcel of real estate a legal description, its area, a short statement of the character of any improvements, and if located in a city the name of street and number. Description of bonds should include the number transferred, principal amount, name of obligor,

date of maturity, rate of interest, date or dates on which interest is payable, series number where there is more than one issue, the exchange upon which listed, or the principal business office of the corporation, if unlisted. Description of stocks should include number of shares, whether common or preferred, and, if preferred, what issue thereof, par value, quotation at which returned, exact name of corporation, and, if the stock is unlisted, the location of the principal business office and State in which incorporated and the date of incorporation. If a listed security, state principal exchange upon which sold. Description of notes should include name of maker, date on which given, date of maturity, amount of principal, amount of principal unpaid, rate of interest and whether simple or compound, and date to which interest has been paid. If the gift of property includes accrued income thereon to the date of the gift, the amount of such accrued income should be separately set forth. Description of land contracts transferred should include name of vendee, date of contract, description of property, sale price, initial payment, amounts of installment payments, unpaid balance of principal, interest rate and date prior to gift to which interest has been paid. Description of life insurance policies should show the name of the insurer and the number of the policy. A supplemental statement, Form 938, must be filed for every life insurance policy. (See section 86.26.) In describing an annuity, the name and address of the issuing company should be given, or if payable out of a trust or other fund such a description as will fully identify such trust or fund. If the annuity is payable for a term of years, the duration of the term and the date on which it began should be given, and if payable for the life of any person, the date of birth of such person should be stated. Judgments should be described by giving the title of the cause and the name of the court in which rendered, date of judgment, name and address of judgment debtor, amount of judgment, rate of interest to which subject, whether any payments have been made thereon, and, if so, when and in what amounts.

SEC. 1007. RECORDS AND SPECIAL RETURNS.

(a) **BY DONOR.**—Every person liable to any tax imposed by this chapter or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) **TO DETERMINE LIABILITY TO TAX.**—Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records, as the Commissioner deems sufficient to show whether or not such person is liable to tax under this chapter.

SEC. 86.25 AIDS TO DETERMINATION AND COLLECTION OF TAX.—In assessing and collecting gift taxes, the Commissioner has the benefit of

all existing internal revenue laws in so far as such laws are applicable. (See section 1028.) The Commissioner may require any person to keep specific records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may prescribe in order that he may determine whether such person is liable for the tax. In accordance with this provision, every individual shall, for the purpose of determining the total amount of his gifts, keep such permanent books of account or records as are necessary to establish the amount of his total gifts (limited as provided in section 1003(b)), together with the deductions allowable in determining the amount of his net gifts, and the other information required to be shown in a gift tax return.

SEC. 86.26 SUPPLEMENTAL DATA.—In order that the Commissioner may determine the correct tax the donor shall furnish such supplemental data as may be deemed necessary by the Commissioner. It is, therefore, the duty of the donor to furnish upon request copies of all documents relating to his gift or gifts, appraisal lists of any items included in the total amount of gifts, copies of balance sheets, or other financial statements relating to the value of stock constituting the gift, and any other information obtainable by him that may be found necessary in the determination of the tax. (See section 86.19.) For every policy of life insurance listed on the return, the donor must procure a statement from the insurance company on Form 938, in accordance with instructions printed thereon, and file it with the collector who receives the return. If specifically requested by the Commissioner, the insurance company shall file this statement direct with the Bureau.

SEC. 86.27 RECOGNITION OF ATTORNEYS AND OTHER PERSONS REPRESENTING TAXPAYERS.—For regulations governing the recognition of attorneys, agents, and other persons representing claimants before the Treasury Department, reference should be made to Treasury Department Circular No. 230, as revised, copies of which may be obtained upon application to the secretary of the Committee on Practice, Treasury Department, Washington, D. C.

If an attorney or other person asks a ruling on a question of law arising in a specific case, the Commissioner will require satisfactory evidence of the right to obtain such ruling. The transaction on which the ruling is sought must be completed and not merely proposed or planned. Hypothetical questions cannot be answered.

SEC. 1008. PAYMENT OF TAX.

(a) **TIME OF PAYMENT.**—The tax imposed by this chapter shall be paid by the donor on or before the 15th day of March following the close of the calendar year.

(b) **EXTENSION OF TIME FOR PAYMENT.**—At the request of the donor, the Commissioner may extend the time for payment of the amount determined as the tax by the donor, for a period not to exceed six months from the date prescribed for the payment of the tax. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

(c) **VOLUNTARY ADVANCE PAYMENT.**—A tax imposed by this chapter, may be paid, at the election of the donor, prior to the date prescribed for its payment.

(d) **FRACTIONAL PARTS OF CENT.**—In the payment of any tax under this chapter a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(e) **RECEIPTS.**—The collector to whom any payment of any gift tax is made shall, upon request, grant to the person making such payment a receipt therefor.

SEC. 86.28 DATE OF PAYMENT.—The tax is required to be paid by the donor on or before the 15th day of March following the close of the calendar year in which the gifts were made, unless an extension of time for payment thereof has been granted by the Commissioner. (See section 86.29.)

SEC. 86.29 EXTENSION OF TIME FOR PAYMENT OF TAX SHOWN ON RETURN.—If it is shown to the satisfaction of the Commissioner that the payment of the amount determined as the tax by the donor, or any part thereof, upon the due date will result in undue hardship to the donor, the Commissioner, at the request of the donor, may grant an extension of time for the payment for a period not to exceed six months. The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the donor. It must appear that substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the donor from making payment of the amount at the due date. If a market exists, the sale of property at the current market price is not ordinarily considered as resulting in undue hardship. An application for an extension of time for the payment of such tax should be made under oath and must be accompanied or supported by evidence showing the undue hardship that would result to the donor if the extension were refused. A sworn statement of assets and liabilities of the donor and an itemized statement under oath showing all receipts and disbursements for each of the three months immediately preceding the month in which falls the date prescribed for the payment of the tax are required and should accompany the application. The application, with the evidence, must be filed with the collector, who will transmit it to the Commissioner with his recommendations as to the extension. When it is received by the Commissioner, it will be examined and, if possible, within 30 days will be denied, granted, or tenta-

tively granted subject to certain conditions of which the donor will be notified. The Commissioner will not consider an application for such an extension unless request therefor is made to the collector on or before the due date. If the donor desires to obtain an additional extension, the request therefor must be made to the collector on or before the date of the expiration of the previous extension.

As a condition to the granting of such an extension, the Commissioner will usually require the donor to furnish a bond in an amount not exceeding double the amount for which the extension is desired, or to furnish other security satisfactory to the Commissioner for the payment of the liability on or before the date prescribed for the payment in the extension, so that the risk of loss to the Government will not be more at the end of the extension period than it was at the beginning of the period. If a bond is required it shall be conditioned upon the payment of the amount for which the extension is granted, together with interest and additional amounts assessed in connection therewith, in accordance with the terms of the extension granted, and shall be executed by a surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds, and shall be subject to the approval of the Commissioner. In lieu of such a bond, the donor may file a bond secured by the deposit of bonds or notes of the United States, any public debt obligations of the United States, or any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, equal in their total par value to the amount of such bond. (See section 1126 of the Revenue Act of 1926, as amended by section 7 of the Act of February 4, 1935, 49 Stat. 22, 6 U. S. C. 15.)

The amount for which an extension is granted, with the additions thereto, shall be paid on or before the expiration of the period of the extension without the necessity of notice and demand from the collector. Payment of the amount for which the extension was granted and the additions thereto before the expiration of the extension will not relieve the donor from paying the entire amount of interest provided for in the extension.

SEC. 86.30 VOLUNTARY ADVANCE PAYMENT.—The gift tax may be paid at the election of the donor prior to the date prescribed for its payment, that is, prior to the 15th day of March following the close of the calendar year in which the gift or gifts were made. No discount will be allowed for payment in advance of the due date.

SEC. 86.31 WHEN FRACTIONAL PART OF CENT MAY BE DISREGARDED.—In the payment of tax a fractional part of a cent shall be disregarded, unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. A fractional part of a cent should not be disregarded in the computation of the tax.

SEC. 86.32 RECEIPTS FOR TAXES.—Upon request the collector will give a receipt for tax payments. In the case of payments made by check or money order, the canceled check or the money order receipt is usually a sufficient receipt. In case of payments in cash, however, it might be to the donor's interest to require the collector to furnish a receipt.

SEC. 86.33 PAYMENT BY CHECK.—Collectors may accept uncertified checks in the payment of the tax, provided such checks are collectible at par—that is, for the full amount without any deduction for exchange or other charges. The day on which the check is received will be considered the date of payment so far as the taxpayer is concerned unless the check is uncollectible.

All expenses incident to the attempt to collect unhonored checks and their return through the depository bank must be paid by the drawer of the check to the bank on which it is drawn. (See section 3971.) If a check has been returned uncollected by the depository bank, the collector should proceed to collect the tax as though no check had been given, and the taxpayer will remain liable for payment of the tax and for all interest, legal penalties, and additions, if any attach, to the same extent as though such check had not been tendered. A taxpayer who tenders a certified check in payment of taxes is not released from his obligation until the check has been paid. (See section 3656.)

SEC. 86.34 DONOR LIABLE FOR TAX.—The statute provides that the donor shall pay the tax. If the donor dies before the tax is paid, his executor or administrator shall make payment thereof to the collector. If there is no duly qualified executor or administrator, the heirs, legatees, devisees, and distributees are liable for and required to pay the tax to the extent of the value of their inheritance, bequest, devise, or distributive share of the donor's estate. As to the personal liability of the donee, see section 86.35, and as to that of the executor or administrator, see section 86.70.

SEC. 1009. LIEN FOR TAX.

The tax imposed by this chapter shall be a lien upon all gifts made during the calendar year, for ten years from the time the gifts are made. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. Any part of the property comprised in the gift sold by the donee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien herein imposed and the lien, to the extent of the value of such gift, shall attach to all the property of the donee (including after-acquired property) except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth. If the Commissioner is satisfied that the tax liability has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary,

issue his certificate, releasing any or all of the property from the lien herein imposed.

SEC. 86.35 LIEN FOR TAX.—A lien attaches upon all gifts made during the calendar year for the amount of the tax imposed upon the gifts made during such year. The lien extends for a period of 10 years from the time the gifts were made, unless the tax is sooner paid. If the tax is not paid when due, the donee of any gift becomes personally liable for the tax to the extent of the value of his gift. Any part of property which was the subject of a gift, sold by the donee to a bona fide purchaser for an adequate and full consideration in money or money's worth, is divested of the lien, but a like lien to the extent of the value of such gift attaches to all the property of the donee, including after-acquired property, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

SEC. 86.36 RELEASE OF LIEN.—The statute provides that, if the Commissioner is satisfied that the tax liability has been fully discharged or provided for, he may issue his certificate releasing any or all property from the lien imposed thereon. The issuance of certificates releasing such lien is a matter resting within the discretion of the Commissioner, and certificates will be issued only in case there is actual need therefor. The primary purpose of such release is not to evidence payment or satisfaction of the tax but to permit transfer of property free from the lien in case it is necessary to clear title. Receipts for payment of tax are issued by the collector. (See section 86.32.)

If the tax liability has been fully discharged, or its discharge provided for to the satisfaction of the Commissioner by the applicant for the release of lien filing with the collector a surety bond, a certificate may then be issued releasing any or all property from the lien imposed thereon. The tax will be considered fully discharged only when the return has been examined and payment of the tax, including any deficiency determined to be due, has been made. If the tax liability has not been fully discharged, or provided for as above stated, no general release will be granted, but certificates releasing the lien on particular items of property may be issued by the Commissioner, who may require as a prerequisite, in such amount as he may designate, a partial payment of the tax, or a surety bond. As to the character of surety bonds required, see section 86.29. In lieu of a surety bond, the taxpayer may file a bond secured by the deposit of bonds or notes of the United States, any public debt obligations of the United States, or any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, equal in their total par value to the

amount of such bond. (See section 1126 of the Revenue Act of 1926, as amended by section 7 of the Act of February 4, 1935, 49 Stat. 22, 6 U. S. C. 15.)

The application for a release should be filed with the Commissioner, should explain the circumstances that require the release, and should fully describe the particular items for which the release is desired. If the application is made prior to the filing of the return for gift tax, an affidavit may be required showing the value of the property to be released from the lien, the basis for such valuation, the total amount of gifts made during the calendar year and the prior calendar years subsequent to the enactment of the Revenue Act of 1932, the approximate value of all real estate upon which the lien has attached, and, in case the property is to be sold or otherwise transferred, the name and address of the purchaser or transferee and the consideration, if any, paid or to be paid by him.

SEC. 1010. EXAMINATION OF RETURN AND DETERMINATION OF TAX.

As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax.

SEC. 86.37 EXAMINATION OF RETURN AND DETERMINATION OF TAX BY THE COMMISSIONER.—As soon as practicable after returns are filed, they will be examined and the amount of tax determined under such procedure as may be prescribed from time to time by the Commissioner. (See section 1012 and section 86.39.)

SEC. 1011. DEFINITION OF DEFICIENCY.

As used in this chapter in respect of the tax imposed by this chapter the term "deficiency" means—

(1) The amount by which the tax imposed by this chapter exceeds the amount shown as the tax by the donor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the donor upon his return, or if no return is made by the donor, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax.

SEC. 86.38 DEFICIENCY DEFINED.—Section 1011, by its definition of the word "deficiency," provides a term which will apply to any amount of tax determined to be due in excess of the amount of tax reported by the donor upon his return; or in excess of the amount reported by the donor after adjustment made for prior assessments, abatements, credits, refunds, or collections without assessment. In

defining the term "deficiency" section 1011 recognizes two classes of cases—one, where the taxpayer makes a return showing some tax liability; the other, where the taxpayer makes a return showing no tax liability, or where the taxpayer fails to make a return. Additional tax shown on any so-called "amended return" is a deficiency within the meaning of the statute.

When a donor's taxability is considered for the first time, the deficiency is the excess of the amount determined to be the correct amount of tax over the amount shown as the tax by the donor on his return, or, if no tax was reported by the donor, the deficiency is the amount determined to be the correct amount of tax. Subsequent information sometimes discloses that the amount previously determined to be the correct amount of tax is less than the correct amount, and that a redetermination of the tax is necessary. In such a case, the deficiency on redetermination is the excess of the amount determined to be the correct amount of tax over the sum of the amount of tax reported by the donor and the deficiency assessed in connection with the previous determination. If it is a case where no tax was reported by the donor, the deficiency is the excess of the amount determined to be the correct amount of tax over the amount of deficiency assessed in connection with the previous determination. If the previous determination resulted in a credit or refund to the taxpayer, the deficiency upon the second determination is the excess of the amount determined to be the correct amount of tax over the amount of tax reported by the donor decreased by the amount of the credit or refund.

SEC. 1012. ASSESSMENT AND COLLECTION OF DEFICIENCIES. [As Originally Enacted.]

(a) (1) PETITION TO BOARD OF TAX APPEALS.—If the Commissioner determines that there is a deficiency in respect of the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to the donor by registered mail. Within 90 days after such notice is mailed (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day), the donor may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this chapter and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the donor, nor until the expiration of such 90-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3653(a) the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

(2) CROSS REFERENCES.—

For exceptions to the restrictions imposed by this subsection see—
Subsection (d) of this section, relating to waivers by the donor;

Subsection (f) of this section, relating to notifications of mathematical errors appearing upon the face of the return;

Section 1013, relating to jeopardy assessments;

Section 1015, relating to bankruptcy and receiverships; and

Section 1145, relating to assessment or collection of the amount of the deficiency determined by the Board pending court review.

(b) **COLLECTION OF DEFICIENCY FOUND BY BOARD.**—If the donor files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the decision of the Board which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

(c) **FAILURE TO FILE PETITION.**—If the donor does not file a petition with the Board within the time prescribed in subsection (a) the deficiency, notice of which has been mailed to the donor, shall be assessed, and shall be paid upon notice and demand from the collector.

(d) **WAIVER OF RESTRICTIONS.**—The donor shall at any time have the right, by a signed notice in writing filed with the Commissioner, to waive the restrictions provided in subsection (a) on the assessment and collection of the whole or any part of the deficiency.

(e) **INCREASE OF DEFICIENCY AFTER NOTICE MAILED.**—The Board shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the donor, and to determine whether any additional amount or addition to the tax should be assessed, if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) **FURTHER DEFICIENCY LETTERS RESTRICTED.**—If the Commissioner has mailed to the donor notice of a deficiency as provided in subsection (a) of this section, and the donor files a petition with the Board within the time prescribed in such subsection, the Commissioner shall have no right to determine any additional deficiency in respect of the same calendar year, except in the case of fraud, and except as provided in subsection (e) of this section, relating to assertion of greater deficiencies before the Board, or in section 1013(c), relating to the making of jeopardy assessments. If the donor is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered (for the purposes of this subsection, or of subsection (a) of this section, prohibiting assessment and collection until notice of deficiency has been mailed, or of section 1027(c), prohibiting credits or refunds after petition to the Board of Tax Appeals) as a notice of a deficiency, and the donor shall have no right to file a petition with the Board based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a) of this section.

(g) **JURISDICTION OVER OTHER CALENDAR YEARS.**—The Board in redetermining a deficiency in respect of any calendar year shall consider such facts with relation to the taxes for other calendar years

as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other calendar year has been overpaid or underpaid.

(h) **FINAL DECISIONS OF BOARD.**—For the purposes of this chapter the date on which a decision of the Board becomes final shall be determined according to the provisions of section 1140.

(i) **EXTENSION OF TIME FOR PAYMENT OF DEFICIENCIES.**—Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the donor the Commissioner, under regulations prescribed by the Commissioner, with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax), may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of eighteen months, and, in exceptional cases, for a further period not in excess of twelve months. If an extension is granted, the Commissioner may require the donor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties, as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension.

(j) **ADDRESS FOR NOTICE OF DEFICIENCY.**—In the absence of notice to the Commissioner under section 1026(a) of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by this chapter, if mailed to the donor at his last known address, shall be sufficient for the purposes of this chapter even if such donor is deceased, or is under a legal disability.

SEC. 456. PERIOD FOR FILING PETITION EXTENDED IN CERTAIN CASES. [REVENUE ACT OF 1942, ENACTED OCTOBER 21, 1942.]

(a) **PERIOD EXTENDED.**—Section 1012(a)(1) (relating to period for filing petition with Board of Tax Appeals) is amended by inserting at the end thereof the following new sentence: "If the notice is addressed to a donor outside the States of the Union and the District of Columbia, the period specified in this paragraph shall be one hundred and fifty days in lieu of ninety days."

(b) **EFFECTIVE DATE.**—The amendment made by this section shall be applicable with respect to notices of deficiency mailed after the date of the enactment of this Act.

SEC. 504. CHANGE OF NAME OF BOARD OF TAX APPEALS. [REVENUE ACT OF 1942, ENACTED OCTOBER 21, 1942.]

(a) **THE TAX COURT OF THE UNITED STATES.**—Effective on the day after the date of enactment of this Act, section 1100 (relating to status of Board of Tax Appeals) is amended by inserting at the end thereof the following new sentence: "The Board shall be known as The Tax Court of the United States and the members thereof shall be known as the presiding judge and the judges of The Tax Court of the United States."

(b) **POWERS, TENURE, ETC., UNCHANGED.**—The jurisdiction, powers, and duties of The Tax Court of the United States, its divisions and its officers and employees, and their appointment, including the designation of its officers, and the immunities, tenure of office, powers, duties, rights, and privileges of the presiding judge and judges of The Tax Court of the

United States shall be the same as by existing law provided in the case of the Board of Tax Appeals. The Commissioner shall continue to be represented by the same counsel in the same manner before the Court as he has heretofore been represented in proceedings before the Board of Tax Appeals and the taxpayer shall continue to be represented in accordance with rules of practice prescribed by the Court. No qualified person shall be denied admission to practice before such Court because of his failure to be a member of any profession or calling.

(c) REFERENCES.—All references in any statute (except this section), or in any rule, regulation, or order, to the "Board of Tax Appeals" or to the "Board" when used in the sense of "Board of Tax Appeals", or to the "member", "members", or "chairman" thereof shall be considered to be made to The Tax Court of the United States, the judge, judges, and presiding judge thereof, respectively.

SEC. 86.39. ASSESSMENT OF DEFICIENCY.—If the Commissioner determines that there is a deficiency in respect of the tax he is authorized to notify the donor of the deficiency by registered mail. In the absence of notice to the Commissioner under section 1026(a) of the existence of a fiduciary relationship, the Commissioner is authorized to mail the notice of a deficiency to the donor at his last known address, and such notice is sufficient even if the donor is deceased or is under a legal disability. Within 90 days after the notice of deficiency is mailed (or within 150 days after the notice of deficiency is mailed in case such notice is mailed after October 21, 1942, addressed to a donor outside the States of the Union and the District of Columbia), a petition may be filed with The Tax Court of the United States (formerly known as the Board of Tax Appeals) for a redetermination of the deficiency. In determining such prescribed period, Sunday or a legal holiday in the District of Columbia is not to be counted as the last day thereof. Except as stated in (a), (b), (c), (d), and (e) of this section, no assessment of deficiency in respect of the tax shall be made until such notice has been mailed to the donor, nor until the expiration of the period prescribed for the filing of a petition with The Tax Court, nor, if a petition has been filed, until the decision of The Tax Court has become final. As to the date on which a decision of The Tax Court becomes final, see sections 1140 and 1142.

(a) The donor may, at any time, by a signed notice in writing filed with the Commissioner, waive the restrictions on the assessment of the whole or any part of the deficiency. The notice must in all cases be filed with the Commissioner. The filing of such notice with The Tax Court does not constitute filing with the Commissioner within the meaning of the statute. After such waiver has been acted upon by the Commissioner and the assessment has been made in accordance with its terms, the waiver cannot be withdrawn. After a waiver of the restrictions on the assessment of the deficiency has been filed, there will be assessed at the same time as the assessment made in

accordance with the terms of the waiver interest upon the tax so assessed at the rate of 6 percent per annum from the due date of the tax to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed, whichever is the earlier. (See section 1021 and section 86.53.)

(b) If a donor is notified of an additional amount of tax due on account of a mathematical error appearing upon the face of his return, such notice is not a notice of deficiency prescribed by section 1012(a) and the donor has no right to file a petition with The Tax Court upon the basis of such notice, nor is the assessment of such additional tax prohibited by the provisions of section 1012(a).

(c) If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, such deficiency shall be assessed immediately as provided in section 1013. (See section 86.43.)

(d) Upon the adjudication of bankruptcy of a donor in any bankruptcy proceeding or the appointment of a receiver for a donor in any receivership proceedings before any court of the United States or of any State or Territory or of the District of Columbia, any deficiency determined by the Commissioner in respect of the tax shall be assessed immediately irrespective of the provisions of section 1012(a) if such deficiency has not been assessed in accordance with the law prior to the adjudication of bankruptcy or the appointment of the receiver. (See section 1015 and section 86.45.)

(e) If The Tax Court renders a decision and determines that there is a deficiency, and, if the donor duly files a petition for review of the decision by a Circuit Court of Appeals (or the United States Court of Appeals for the District of Columbia), the filing of the petition will not operate as a stay of the assessment of any portion of the deficiency determined by The Tax Court, unless the donor has filed a bond with The Tax Court as provided in section 1145. If, in such a case, the necessary bond has not been filed by the donor, the amount determined by The Tax Court as a deficiency will be assessed immediately after the filing of such petition. If the Commissioner files a petition for review and the donor has not filed a petition for review within three months after the decision of The Tax Court is rendered, the amount determined by The Tax Court as a deficiency will be assessed immediately after the expiration of the 3-month period. If the Commissioner files a petition for review, and a similar petition is filed by the donor, but the bond required by section 1145 has not been filed with The Tax Court, the deficiency will be assessed immediately after the filing of the petition for review by the donor.

If no petition is filed with The Tax Court within the period prescribed, the Commissioner shall assess the amount determined by him as the deficiency and of which he has notified the donor by registered mail. In such case, the Commissioner will not be precluded from determin-

ing a further deficiency and notifying the donor thereof by registered mail. In case a petition is filed with The Tax Court, the entire amount redetermined as the deficiency by the decision of The Tax Court which has become final shall be assessed by the Commissioner. If the Commissioner mails to the donor notice of a deficiency and the donor files a petition with The Tax Court within the period prescribed, the Commissioner is barred from determining any additional deficiency for the same taxable year except in the case of fraud and except as provided in section 1012(e), relating to the assertion of greater deficiencies before The Tax Court, or in section 1013, relating to jeopardy assessments. (See section 86.43.)

SEC. 86.40 WAIVER BY DONOR OF RESTRICTIONS ON ASSESSMENT.—If the donor acquiesces in any proposed, tentative, or final determination of the whole or any part of the deficiency, the donor has the right by a signed notice in writing filed with the Commissioner to waive the restrictions on the assessment and collection of such whole or part of the deficiency under the provisions of section 1012(d). A form of notice of such waiver for filing with the Commissioner will be supplied the donor upon notice of any proposed, tentative, or final determination of a deficiency. Filing of the notice of waiver will expedite assessment and stop the accrual of interest on the amount assessed until after notice and demand by the collector. As to interest on deficiencies, see section 1021 and section 86.53.

SEC. 86.41 COLLECTION OF DEFICIENCY.—If a deficiency as redetermined by a decision of The Tax Court which has become final is assessed, or the donor has not filed a petition with The Tax Court and the deficiency as determined by the Commissioner has been assessed, or the restrictions upon the assessment and collection of the whole or any part of the deficiency provided in subsection (a) of section 1012 have been waived and an assessment made in accordance with such waiver, the amount so assessed shall be paid upon notice and demand from the collector. As to deficiencies coming within the provisions of sections 1013, 1015, and 1145, relating to jeopardy assessments, bankruptcies and receiverships, and deficiencies determined by The Tax Court pending court review, see sections 86.43, 86.45, and 86.39(e). As to interest on deficiencies, see section 1021 and section 86.53.

SEC. 86.42 EXTENSION OF TIME FOR PAYMENT OF DEFICIENCIES.—If it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for payment thereof would result in undue hardship to the donor, the Commissioner may grant an extension of time for the payment of the deficiency or any part thereof for a period of time not in excess of 18 months and in exceptional cases for a further period not in excess of 12 months. The extension will not be granted upon a general statement of hardship.

The term "undue hardship" means more than an inconvenience to the donor. It must appear that substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the donor from making payment of the deficiency at the date prescribed for payment. If a market exists, the sale of property at the current market price is not ordinarily considered as resulting in undue hardship. The statute provides that no extension will be granted where the deficiency is due to negligence or intentional disregard of rules and regulations or to fraud with intent to evade tax.

An application for an extension of time for the payment of the deficiency should be made under oath and must be accompanied or supported by evidence showing the undue hardship that would result to the donor if the extension were refused. A sworn statement of assets and liabilities of the donor and an itemized statement under oath showing all receipts and disbursements for each of the three months immediately preceding the month in which falls the date prescribed for the payment of the deficiency are required and should accompany the application. The application, with the evidence, must be filed with the collector, who will transmit it to the Commissioner with his recommendation as to the extension. When it is received by the Commissioner, it will be examined and, if possible, within 30 days will be denied, granted, or tentatively granted subject to certain conditions of which the donor will be notified. The Commissioner will not consider an application for an extension of time for the payment of a deficiency unless request therefor is made to the collector on or before the date prescribed for payment thereof, as shown by the notice and demand from the collector. If the donor desires to obtain an additional extension, the request therefor must be made to the collector on or before the date of the expiration of the previous extension.

As a condition to the granting of such an extension, the Commissioner will usually require the donor to furnish a bond in an amount not exceeding double the amount of the deficiency, or to furnish other security satisfactory to the Commissioner for the payment of the liability on or before the date prescribed for the payment in the extension, so that the risk of loss to the Government will not be more at the end of the extension period than it was at the beginning of the period. If a bond is required it shall be conditioned upon the payment of the deficiency, interest, and additional amounts assessed in connection therewith in accordance with the terms of the extension granted, and shall be executed by a surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds, and shall be subject to the approval of the Commissioner. In lieu of such a bond, the donor may file a bond

secured by the deposit of bonds or notes of the United States, any public debt obligations of the United States, or any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, equal in their total par value to the amount of such bond. (See section 1126 of the Revenue Act of 1926, as amended by section 7 of the Act of February 4, 1935, 49 Stat. 22, 6 U. S. C. 15.)

The amount for which an extension is granted, with the additions thereto, shall be paid on or before the expiration of the period of the extension without the necessity of notice and demand from the collector. Payment of the amount for which the extension was granted and the additions thereto before the expiration of the extension will not relieve the donor from paying the entire amount of interest provided for in the extension.

SEC. 1013. JEOPARDY ASSESSMENTS.

(a) **AUTHORITY FOR MAKING.**—If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall immediately assess such deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) and notice and demand shall be made by the collector for the payment thereof.

(b) **DEFICIENCY LETTERS.**—If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 1012(a), then the Commissioner shall mail a notice under such subsection within 60 days after the making of the assessment.

(c) **AMOUNT ASSESSABLE BEFORE DECISION OF BOARD.**—The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the donor, despite the provisions of section 1012(f) prohibiting the determination of additional deficiencies, and whether or not the donor has theretofore filed a petition with the Board of Tax Appeals. The Commissioner may, at any time before the decision of the Board is rendered, abate such assessment, or any unpaid portion thereof, to the extent that he believes the assessment to be excessive in amount. The Commissioner shall notify the Board of the amount of such assessment, or abatement, if the petition is filed with the Board before the making of the assessment or is subsequently filed, and the Board shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) **AMOUNT ASSESSABLE AFTER DECISION OF BOARD.**—If the jeopardy assessment is made after the decision of the Board is rendered such assessment may be made only in respect of the deficiency determined by the Board in its decision.

(e) **EXPIRATION OF RIGHT TO ASSESS.**—A jeopardy assessment may not be made after the decision of the Board has become final or after the donor has filed a petition for review of the decision of the Board.

(f) **BOND TO STAY COLLECTION.**—When a jeopardy assessment has been made the donor, within 10 days after notice and demand from the collector for the payment of the amount of the assessment, may

obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in section 1022 or 1023(b)(4). If any portion of the jeopardy assessment is abated by the Commissioner before the decision of the Board is rendered, the bond shall, at the request of the taxpayer, be proportionately reduced.

(g) **SAME—FURTHER CONDITIONS.**—If the bond is given before the donor has filed his petition with the Board under section 1012(a), the bond shall contain a further condition that if a petition is not filed within the period provided in such subsection, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subsection.

(h) **WAIVER OF STAY.**—Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The donor shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the donor, be proportionately reduced. If the Board determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Board is rendered the bond shall, at the request of the donor, be proportionately reduced.

(i) **COLLECTION OF UNPAID AMOUNTS.**—When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded as provided in section 1027, without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

SEC. 86.43 JEOPARDY ASSESSMENTS.—If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he is required to assess such deficiency immediately, together with the interest and other additional amounts provided by law. If a deficiency is assessed on account of jeopardy after the decision of The Tax Court of the United States (formerly known as the Board of Tax Appeals) is rendered, the jeopardy assessment may be made only with respect to the deficiency determined by The Tax Court. The Com-

missioner is prohibited from making a jeopardy assessment after a decision of The Tax Court has become final (see section 1140) or after the donor has filed a petition for review of the decision of The Tax Court.

If notice of a deficiency was mailed to the donor (see section 1012(a) and section 86.39) before it was discovered that delay would jeopardize the assessment or collection of the tax, a jeopardy assessment may be made in an amount greater or less than that included in the deficiency notice. On the other hand if the assessment on account of jeopardy was made without mailing the notice required by section 1012(a), the Commissioner must within 60 days after the making of the assessment send the donor notice of the deficiency by registered mail. The donor may file a petition with The Tax Court for a redetermination of the amount of the deficiency within 90 days after such notice is mailed (or within 150 days after mailing in case such notice is mailed after October 21, 1942, addressed to a donor outside the States of the Union and the District of Columbia), and in determining such prescribed period Sunday or a legal holiday in the District of Columbia is not to be counted as the last day thereof. If the petition of the donor is filed with The Tax Court, either before or after the making of the jeopardy assessment, the Commissioner is required to notify The Tax Court of such assessment, and The Tax Court has jurisdiction to redetermine the amount of the deficiency together with all other amounts assessed at the same time in connection therewith. If the jeopardy assessment is made, the Commissioner may, at any time before the decision of The Tax Court is rendered, abate the assessment or any unpaid portion thereof, to the extent that he believes it to be excessive in amount. (See section 1013(c).)

After a jeopardy assessment has been made, the list showing such assessment will be immediately transmitted to the collector. Upon receipt of the list containing the assessment, the collector is required to send notice and demand to the donor for the amount of the jeopardy assessment. Regardless of whether the donor has filed a petition with The Tax Court, he is required to make payment of the amount of such assessment within 10 days after the sending of notice and demand by the collector, unless before the expiration of such 10-day period he files with the collector a bond of the character hereinafter prescribed. The bond must be in such amount, not exceeding double the amount for which the stay is desired, as the collector deems necessary and must be executed by sureties satisfactory to the collector. In lieu of a surety bond, the taxpayer may file a bond secured by the deposit of bonds or notes of the United States, any public debt obligations of the United States, or any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal

by the United States, equal in their total par value to the amount of such bond. (See section 1126 of the Revenue Act of 1926, as amended by section 7 of the Act of February 4, 1935, 49 Stat. 22, 6 U. S. C. 15.) The bond must be conditioned upon the payment of so much of the amount, the collection of which is to be stayed by the bond, as is not abated by a decision of The Tax Court which has become final, together with the interest on such amount as may accrue under section 1022 and section 1023(b)(4). If the bond is given before the donor has filed his petition with The Tax Court, it must contain a further condition that if a petition is not filed before the expiration of the period provided for the filing of such petition, the amount stayed by the bond will be paid upon notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 percent per annum from the date of the jeopardy notice and demand to the date of the notice and demand made after the expiration of such period. If a petition is not filed with The Tax Court within the period prescribed for the filing of such petition, the collector will be so advised, and, if collection of the deficiency has been stayed by the filing of a bond within 10 days after the date of jeopardy notice and demand, he should then give notice and make demand for payment of the amount assessed plus interest. Any bond filed after the expiration of 10 days from the date of the jeopardy notice and demand is not such a bond as is contemplated by section 1013(f), although the collector may in his discretion accept the bond and stay collection of the deficiency. If the Commissioner believes that the amount of the jeopardy assessment is excessive and abates a portion thereof before the decision of The Tax Court is rendered, the amount of the bond will be proportionately reduced at the request of the donor.

Upon the filing of a bond of the character described within 10 days after the date of notice and demand for payment of the amount assessed, the collection of so much thereof as is covered by the bond will be stayed. The donor may at any time waive the stay of collection of the whole or any part of the amount covered by the bond. If as a result of such waiver any part of the amount covered by the bond is paid, then the bond will at the request of the donor be proportionately reduced.

After The Tax Court has rendered its decision and such decision has become final, the collector will be notified of the action taken. The collector will then send notice and demand for the unpaid portion of the amount determined by The Tax Court, the collection of which has been stayed by the bond. The collector is required to include in the notice and demand for the unpaid portion, interest at the rate of 6 percent per annum from the date of the jeopardy notice and demand to the date of the notice and demand referred to in this paragraph.

If the amount of the jeopardy assessment is less than the amount determined by The Tax Court, the difference, together with interest as provided in section 1021, will be assessed, and collected as part of the tax upon notice and demand from the collector. If the amount included in the notice and demand made after the decision of The Tax Court is not paid within 10 days after such notice and demand, there shall be collected, as part of the tax, interest as provided in section 1023. (See section 86.55.) If the amount of the jeopardy assessment is in excess of the amount determined by The Tax Court, the unpaid portion of such excess will be abated. If any part of the excess amount has been paid, it will be credited or refunded to the donor as provided in section 1027. (See sections 86.60–86.63.)

As to bankruptcy and receivership cases, see sections 1015 and 1023(b) (5) and sections 86.45 and 86.55.

SEC. 1014. CLAIMS IN ABATEMENT.

No claim in abatement shall be filed in respect of any assessment in respect of any tax imposed by this chapter.

SEC. 86.44 CLAIMS IN ABATEMENT.—Section 1014 prohibits the filing of claims for abatement by donors in respect of any assessment of gift tax imposed by the Internal Revenue Code. This provision does not prohibit the filing of claims in abatement by collectors. (See also section 86.62.)

SEC. 1015. BANKRUPTCY AND RECEIVERSHIPS.

(a) **IMMEDIATE ASSESSMENT.**—Upon the adjudication of bankruptcy of any donor in any bankruptcy proceeding or the appointment of a receiver for any donor in any receivership proceeding before any court of the United States or of any State or Territory or of the District of Columbia, any deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) determined by the Commissioner in respect of a tax imposed by this chapter upon such donor shall, despite the restrictions imposed by section 1012(a) upon assessments be immediately assessed if such deficiency has not theretofore been assessed in accordance with law. Claims for the deficiency and such interest, additional amounts and additions to the tax may be presented, for adjudication in accordance with law, to the court before which the bankruptcy or receivership proceeding is pending, despite the pendency of proceedings for the redetermination of the deficiency in pursuance of a petition to the Board; but no petition for any such redetermination shall be filed with the Board after the adjudication of bankruptcy or the appointment of the receiver.

(b) **UNPAID CLAIMS.**—Any portion of the claim allowed in such bankruptcy or receivership proceeding which is unpaid shall be paid by the donor upon notice and demand from the collector after the termination of such proceeding, and may be collected by distraint or proceeding in court within six years after termination of such proceeding. Extensions of time for such payment may be had in the same manner and subject to the same provisions and limitations as are provided in sections 1012(1), 1020(b), and 1023(b) (3) in the case of a deficiency in a tax imposed by this chapter.

SEC. 86.45 BANKRUPTCY AND RECEIVERSHIP PROCEEDINGS.—During a bankruptcy proceeding, or an equity receivership proceeding in either a Federal or a State court, the assets of the donor are in general under the control of the court in which such proceeding is pending, and the collection of taxes cannot be made by distraining upon such assets. However, any assets which under applicable provisions of law are not under the control of the court may be subject to distraint.

As used in these regulations the term “bankruptcy proceeding” includes proceedings under Chapters I to VII of the Bankruptcy Act, as amended, or under section 75 (11 U. S. C. 203), or Chapters XI to XIII, of such Act, as amended; and the term “adjudication of bankruptcy” includes an adjudication in a proceeding under Chapters I to VII, as amended, and the filing of a petition under section 75 or Chapters XI to XIII with a court of competent jurisdiction.

The clerk of a court of bankruptcy is required to mail to the Commissioner of Internal Revenue a certified copy of every order of adjudication forthwith upon the entry thereof. In every such case, the court of bankruptcy is required to mail or cause to be mailed a copy of the notice of the first meeting of creditors to the Commissioner of Internal Revenue and to the collector of internal revenue for the district in which the court is located. (See section 58(e) of the Bankruptcy Act, 11 U. S. C. 94(e).)

Collectors should, promptly after notice of outstanding liability against a donor in any bankruptcy or receivership proceeding, and in any event within the time limited by the appropriate provisions of the Bankruptcy Act, as amended, and the orders of the court in which such proceeding is pending, file claim covering such liability in the court in which such proceeding is pending. Such claim should be filed whether the unpaid taxes involved have been assessed or not, except in cases where the departmental instructions direct otherwise; for example, where the payment of the taxes is secured by a sufficient bond. Such claim should cover the amount represented by the assessment, plus interest at the rate of 6 percent per annum for the period from the date of filing claim by the collector to the date of termination of the bankruptcy or receivership proceeding or to the date of payment if payment is made in full prior to such termination. At the same time claim is filed with the bankruptcy or receivership court, the collector will send notice and demand for payment to the donor together with a copy of such claim.

Under section 3466 of the Revised Statutes (31 U. S. C. 191) and section 3467 of the Revised Statutes, as amended by section 518 of the Revenue Act of 1934 (31 U. S. C. 192), and section 64 of the Bankruptcy Act, as amended (11 U. S. C. 104), taxes are entitled to the

priority over other claims therein stated and the trustee, receiver, debtor in possession, or other person designated as in control of the assets of the debtor by the court in which bankruptcy or receivership proceeding is pending, may be held personally liable for failure on his part to protect the priority of the Government respecting taxes of which he has notice. Bankruptcy courts have jurisdiction under the Bankruptcy Act, as amended, to determine all disputes regarding the amount and validity of taxes of a bankrupt or of a debtor in a proceeding under the Bankruptcy Act, as amended. A bankruptcy or receivership proceeding for the donor does not discharge any portion of a claim of the United States for taxes except to the extent which may be provided in a plan or arrangement duly effectuated in a bankruptcy proceeding; and any portion of a claim of the United States for taxes which has been allowed by the court in which the bankruptcy or receivership proceeding is pending and which remains unsatisfied after the termination of the bankruptcy or receivership proceeding shall be collected, with interest as provided in section 1023(b) (5).

SEC. 86.46 IMMEDIATE ASSESSMENTS IN BANKRUPTCY AND RECEIVERSHIP CASES.—If the Commissioner has determined that a deficiency is due in respect of gift tax and the donor has filed a petition with The Tax Court of the United States (formerly known as the Board of Tax Appeals) prior to the adjudication of bankruptcy or the appointment of a receiver, the trustee, receiver, debtor in possession, or other person designated as in control of the assets of the debtor by the court in which the bankruptcy or receivership proceeding is pending, may prosecute the donor's appeal before The Tax Court as to that particular determination. No petition shall be filed with The Tax Court for a redetermination of the deficiency after the adjudication of bankruptcy or the appointment of a receiver.

Claim for the amount of a deficiency, even though pending before The Tax Court for consideration, may be filed with the court in which the bankruptcy or receivership proceeding is pending without awaiting final decision of The Tax Court. In case of final decision of The Tax Court before the termination of the bankruptcy, debtor, or receivership proceeding, a copy of The Tax Court decision may be filed by the Commissioner with the court in which such proceeding is pending.

While the Commissioner is required by section 1015 to make immediate assessment of any deficiency, such assessment is not made as a jeopardy assessment within the meaning of section 1013 and consequently the provisions of that section do not apply to any assessment made under section 1015. Therefore, the notice of the deficiency provided for in section 1013(b) will not be mailed. Although such notice will not be issued, nevertheless a letter will be sent to the donor,

or to the trustee, receiver, debtor in possession, or other person designated by the court in which the bankruptcy or receivership proceeding is pending as in control of the assets of the debtor, notifying him in detail how the deficiency was computed, that he may furnish evidence showing wherein the deficiency is incorrect, and that upon request he will be granted a hearing with respect to such deficiency. If after such evidence is submitted and hearing held any adjustment appears necessary in the deficiency, appropriate action will be taken. A copy of the notification letter will be attached to the assessment list as the collector's authority for filing claim in any bankruptcy or receivership proceeding.

If any portion of the claim allowed by the court in a bankruptcy or receivership proceeding remains unpaid after the termination of such proceeding, the collector will send notice and demand for payment thereof to the donor. Such unpaid portion with interest as provided in section 1023(b)(5) may be collected from the donor by distraint or proceeding in court within six years after the termination of the bankruptcy, debtor, or receivership proceeding. Extensions of time for the payment of such unpaid amount may be granted in the same manner and subject to the same provisions and limitations as provided in sections 1012(i), 1020(b), and 1023(b)(3). (See section 86.42.)

This section deals only with immediate assessments provided for in section 1015 and the procedure in connection with such assessments.

SEC. 1016. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION.

(a) **GENERAL RULE.**—Except as provided in subsection (b), the amount of taxes imposed by this chapter shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of three years after the return was filed.

(b) **EXCEPTIONS.**—

(1) **FALSE RETURN OR NO RETURN.**—In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(2) **COLLECTION AFTER ASSESSMENT.**—Where the assessment of any tax imposed by this chapter has been made within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the donor.

SEC. 86.47 PERIOD OF LIMITATION UPON ASSESSMENT OF TAX.—The amount of the tax must be assessed within three years after the

return was filed. Exceptions to this period of limitation are as follows:

(1) In case of a false or fraudulent return with intent to evade tax, the tax may be assessed at any time after such false or fraudulent return is filed.

(2) In the event the donor fails to file a return, the amount of tax due may be assessed at any time after the date prescribed for filing the return. See section 1017 and section 86.49 for provisions relating to the suspension of the running of the statute of limitations on the making of assessments.

With respect to the period of limitation for assessing the amount of the liability of a transferee of property of a donor, or for assessing the amount of the liability of a fiduciary under section 3467 of the Revised Statutes, as amended by section 518 of the Revenue Act of 1934 (31 U. S. C. 192), see section 1025 and section 86.58.

SEC. 86.48 PERIOD OF LIMITATION UPON COLLECTION OF TAX.—A proceeding in court without assessment for the collection of the tax must be begun within three years after the return was filed, except that if the donor files a false or fraudulent return with intent to evade tax or fails to file a return, a proceeding in court for the collection of the tax may be begun at any time.

In any case in which the tax has been assessed within the statutory period of limitation properly applicable thereto, a proceeding in court or distraint for the collection of such tax may be begun within six years after the assessment thereof, or prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the donor. In determining the running of the statute of limitations in respect of distraint, the distraint shall be considered to have been begun, in the case of personal property, on the date on which the levy upon such property is made, or, in the case of real property, on the date on which notice of the time and place of sale is given to the person whose property it is proposed to sell.

See section 1017 and section 86.49 for provisions relating to the suspension of the running of the statute of limitations on the beginning of distraint or a proceeding in court for collection of the tax.

SEC. 1017. SUSPENSION OF RUNNING OF STATUTE.

The running of the statute of limitations provided in section 1016 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under section 1012(a)) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

SEC. 86.49 SUSPENSION OF RUNNING OF STATUTE OF LIMITATIONS.—

If a notice of a deficiency has been mailed to the donor under the provisions of section 1012(a) (see section 86.39), then the running of the statute of limitations on assessment, on the beginning of distraint after assessment, or on the beginning of a proceeding in court after assessment or without assessment, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or from beginning distraint or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of The Tax Court of the United States (formerly known as the Board of Tax Appeals), until the decision of The Tax Court becomes final), and for 60 days thereafter.

SEC. 1018. ADDITION TO THE TAX IN CASE OF DELINQUENT RETURN.

For addition to the tax in case of failure to make and file a return required by this chapter within the time prescribed by law or prescribed by the Commissioner in pursuance of the law, see section 3612(d) (1).

SEC. 3612. RETURNS EXECUTED BY COMMISSIONER OR COLLECTOR.

(d) ADDITIONS TO TAX.—

(1) **FAILURE TO FILE RETURN.**—In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax: *Provided*, That in the case of a failure to make and file a return required by law, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, if the last date so prescribed for filing the return is after August 30, 1935, then there shall be added to the tax, in lieu of such 25 per centum: 5 per centum if the failure is for not more than 30 days, with an additional 5 per centum for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per centum in the aggregate.

(2) **FRAUD.**—In case a false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 per centum of its amount.

(3) CROSS REFERENCE.—

For additions to tax in the case of income tax, see sections 291 and 293, and in the case of a deficiency in gift tax, see section 1019.

(e) **COLLECTION OF ADDITIONS TO TAX.**—The amount added to any tax under paragraphs (1) and (2) of subsection (d) shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

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SEC. 86.50 ADDITION TO THE TAX FOR FAILURE TO FILE RETURN.—For failure to file the return required by the Internal Revenue Code within the time prescribed or within an extension of time granted by the collector, unless it is filed after such time and the failure is shown to have been due to a reasonable cause and not to willful neglect, 5 percent of the amount of the tax will be added thereto if the failure is for 30 days or less, with an additional 5 percent for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 percent in the aggregate.

Two classes of delinquents are subject to this addition to the tax:

(a) Those who do not file returns, and

(b) Those who file tardy returns and are unable to show reasonable cause for the delay.

A donor who files a tardy return and wishes to avoid the addition to the tax must make an affirmative showing of all facts alleged as a reasonable cause for failure to file the return on time in the form of an affidavit or affidavits which should be attached to the return. If affidavits are furnished with the return or upon the collector's demand, the collector, unless otherwise directed by the Commissioner, will forward the affidavits with the return, and, if the Commissioner determines that the delinquency was due to a reasonable cause and not to willful neglect, the addition to the tax will not be assessed. If the donor exercised ordinary business care and prudence and was nevertheless unable to file the return in the prescribed time, then the delay is due to reasonable cause.

If the addition to the tax for delinquency in filing the return has been added, the amount so added shall be collected in the same manner as the tax, except that the interest provisions of section 1021 (see section 86.53) shall not apply to such additional amount. (But see section 86.55 as to interest accruing after issuance of notice and demand.)

For addition to the tax in case of fraud, see sections 1019(b) and 3612(d) and section 86.51.

SEC. 1019. ADDITIONS TO THE TAX IN CASE OF DEFICIENCY.

(a) **NEGLIGENCE.**—If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5 per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of section 1021, relating to interest on deficiencies, shall not be applicable.

(b) **FRAUD.**—If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid, in lieu of the 50 per centum addition to the tax provided in section 3612(d) (2).

SEC. 86.51 ADDITIONS TO THE TAX IN CASE OF DEFICIENCY.—If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5 percent of the total amount of the deficiency shall be added to the deficiency, and shall be assessed, collected, and paid in the same manner as the deficiency.

If any part of the deficiency is due to fraud with intent to evade tax, 50 percent of the total amount of the deficiency, in addition to the deficiency, shall be assessed, collected, and paid in the same manner as the deficiency. The 50 percent addition to the tax provided by section 1019(b) is in lieu of the 50 percent addition provided in section 3612(d) (2).

The interest provisions of section 1021 (see section 86.53) shall not apply to the additions to the tax described in this section. (But see section 86.55 as to interest accruing after issuance of notice and demand.)

For penalties other than additions to the tax for willful attempts to evade or defeat the tax, see section 1024 and section 86.56.

SEC. 1020. INTEREST ON EXTENDED PAYMENTS.

(a) **TAX SHOWN ON RETURN.**—If the time for payment of the amount determined as the tax by the donor is extended under the authority of section 1008(b), there shall be collected as a part of such amount, interest thereon at the rate of 6 per centum per annum from the date when such payment should have been made if no extension had been granted, until the expiration of the period of the extension.

(b) **DEFICIENCY.**—In case an extension for the payment of a deficiency is granted, as provided in section 1012(i), there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period.

SEC. 86.52 INTEREST ON EXTENDED PAYMENTS.—In case an extension of time has been granted for paying any portion of the tax shown by the donor upon his return, the statute requires the imposition of interest upon the amount, the time for payment of which has been extended, at the rate of 6 percent per annum from the date upon which such payment should have been made (the 15th day of March following the close of the calendar year) to the expiration of the period of the extension.

If an extension of time for paying the deficiency, or any portion thereof, has been granted, section 1020(b) requires the imposition of interest upon the amount, the time for payment of which has been extended, at the rate of 6 percent per annum for the period of the

extension, i. e., from the date prescribed for the payment (10 days after the date of the notice and demand) to the expiration of the period of the extension.

For provisions relating to interest in case the amount, the time for payment of which has been extended, is not paid on or before the expiration of the period of the extension granted, see section 86.55.

Example. A deficiency in tax amounting to \$500 was determined and assessment thereof made on the 15th day of July, the due date of the tax being March 15 preceding. The amount of the assessment in this instance is \$500, plus interest thereon at 6 percent per annum from and including March 16 to and including July 15, amounting to \$10.03, computed upon the basis of 365 days to the year (or 366 days in a leap year), or a total assessment of \$510.03, which thereupon becomes the amount of the deficiency. The date of the notice and demand by the collector for payment was August 1 following the assessment. Within 10 days thereafter \$255.02 was paid and request was made for an extension of time for paying the balance of the deficiency (\$255.01), and an extension from August 11 to and including February 11 was granted for the payment thereof. This amount bears interest at 6 percent per annum for the period of the extension, amounting to \$7.71. The remaining liability is, therefore, \$262.72.

SEC. 1021. INTEREST ON DEFICIENCIES.

Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the due date of the tax to the date the deficiency is assessed, or, in the case of a waiver under section 1012(d), to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier.

SEC. 86.53 INTEREST ON DEFICIENCIES.—The statute provides that the deficiency shall bear interest at the rate of 6 percent per annum from the due date of the tax (the 15th day of March following the close of the calendar year) to the date the deficiency is assessed, except in the case of a waiver of the restrictions against the assessment and collection of the deficiency, and that such interest shall be assessed at the same time as the deficiency and shall be collected as part of the tax. The deficiency in respect to which the restrictions against the assessment and collection are waived under the provisions of section 1012(d) bears interest at the rate of 6 percent per annum from the due date of the tax to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed, whichever is the earlier. The term "deficiency" as used in this section includes any

tax resulting from the correction of a mathematical error appearing upon the face of a return. (See sections 86.38 and 86.39(b).)

For provisions relating to interest upon the deficiency in case an extension of time for payment is granted, see sections 86.52 and 86.55. For provisions relating to interest in case of a jeopardy assessment, see section 86.54.

SEC. 1022. INTEREST ON JEOPARDY ASSESSMENTS.

In the case of the amount collected under section 1013(f) there shall be collected at the same time as such amount, and as a part of the tax, interest at the rate of 6 per centum per annum upon such amount from the date of the jeopardy notice and demand to the date of notice and demand under section 1013(i), or, in the case of the amount collected in excess of the amount of the jeopardy assessment, interest as provided in section 1021.

SEC. 86.54 INTEREST ON JEOPARDY ASSESSMENTS.—In case a stay of the collection of a jeopardy assessment of a deficiency tax (together with interest and any other amount assessed and collectible as a part thereof) is obtained in accordance with the provisions of section 1013(f) (see section 86.43), and a petition for a redetermination of the deficiency is filed with The Tax Court of the United States (formerly known as the Board of Tax Appeals), interest accrues on the unpaid portion of any such amount determined by a decision of The Tax Court which becomes final, at the rate of 6 percent per annum from the date of the notice and demand from the collector following the jeopardy assessment to the date of the notice and demand by the collector subsequent to the final action taken on the petition filed with The Tax Court. If the amount determined by The Tax Court as the amount which should have been assessed is greater than the amount actually assessed, the difference bears interest at the rate of 6 percent per annum from the due date of the tax until the assessment of such difference. If the collection of the jeopardy assessment is stayed, and no petition is filed with The Tax Court for a redetermination of the deficiency, interest accrues upon the deficiency so assessed at the rate of 6 percent per annum from the date of the jeopardy notice and demand to the date of the notice and demand made by the collector after the expiration of the period prescribed for the filing of the petition.

SEC. 1023. ADDITIONS TO THE TAX IN CASE OF NONPAYMENT.

(a) TAX SHOWN ON RETURN.—

(1) PAYMENT NOT EXTENDED.—Where the amount determined by the donor as the tax imposed by this chapter, or any part of such amount, is not paid on the due date of the tax, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 6 per centum per annum from the due date until it is paid.

(2) PAYMENT EXTENDED.—Where an extension of time for payment of the amount so determined as the tax by the donor has been

granted, and the amount the time for payment of which has been extended, and the interest thereon determined under section 1020(a), is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subsection, interest at the rate of 6 per centum per annum shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) DEFICIENCY.—

(1) PAYMENT NOT EXTENDED.—Where a deficiency, or any interest assessed in connection therewith under section 1021, or any addition to the tax provided for in section 3612(d), is not paid in full within 10 days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid.

(2) FILING OF JEOPARDY BOND.—If a bond is filed, as provided in section 1013, the provisions of paragraph (1) of this subsection shall not apply to the amount covered by the bond.

(3) PAYMENT EXTENDED.—If the part of the deficiency the time for payment of which is extended as provided in section 1012(i) is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 6 per centum per annum for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period.

(4) JEOPARDY ASSESSMENT—PAYMENT STAYED BY BOND.—If the amount included in the notice and demand from the collector under section 1013(i) is not paid in full within 10 days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid.

(5) INTEREST IN CASE OF BANKRUPTCY AND RECEIVERSHIPS.—If the unpaid portion of the claim allowed in a bankruptcy or receivership proceeding, as provided in section 1015, is not paid in full within 10 days from the date of notice and demand from the collector, then there shall be collected as a part of such amount interest upon the unpaid portion thereof at the rate of 6 per centum per annum from the date of such notice and demand until payment.

SEC. 86.55 INTEREST ON DELINQUENT TAXES.—If any portion of the tax shown on the donor's return is not paid on or before the due date (the 15th day of March following the close of the calendar year) and no extension of time for payment thereof has been granted, such unpaid portion bears interest from the due date until payment is received by the collector at the rate of 6 percent per annum.

If any portion of a deficiency assessed, together with interest and any other amount assessed and collectible as a part thereof, is not paid within 10 days from the date of the notice and demand issued by the collector (except a deficiency with respect to which a jeopardy assessment is made and collection is stayed by the filing of bond),

and no extension of time for payment thereof has been granted, such unpaid amount bears interest from the date of the notice and demand until payment is received by the collector at the rate of 6 percent per annum.

If an extension of time has been granted for paying any portion of the tax shown on the donor's return (see section 86.29) or for any portion of a deficiency (see section 86.42) and the amount due is not paid in full prior to the expiration of the extension, the total unpaid amount (tax and interest for the period of the extension) bears interest from the expiration of the extension until payment is received by the collector at the rate of 6 percent per annum.

If a deficiency as determined by a decision of The Tax Court of the United States (formerly known as the Board of Tax Appeals) which has become final is in the amount of a jeopardy assessment, collection of which was stayed by the filing of a bond and such amount is not paid in full within 10 days after the notice and demand issued subsequent to such final decision, interest accrues on the unpaid amount for which such notice and demand was made, from the date of the notice and demand until it is paid at the rate of 6 percent per annum.

If, in the case of bankruptcy, debtor's relief proceeding, or a receivership for any donor, any portion of the claim for a deficiency (including interest and any other amount assessed and collectible as a part thereof) presented for adjudication in accordance with law is unpaid, the unpaid portion of the claim, if not paid in full within 10 days from notice and demand from the collector, bears interest from the date of such notice and demand until paid at the rate of 6 percent per annum.

SEC. 1024. PENALTIES.

(a) Any person required under this chapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this chapter, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, on conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

SEC. 86.56 PENALTIES.—Two kinds of penalties are provided for delinquency with respect to duties imposed by the statute:

(1) Criminal penalties, and

(2) Penalties of a certain percentage of the tax, to be added to and collected in the same manner as the tax.

In any case where more than one penalty is provided, the Government may assert any one or more thereof.

Any person required by the Internal Revenue Code to pay any tax, or required by law or regulations made under authority thereof to file any notice or make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of the tax, who willfully fails to pay such tax, file such notice or make such return, keep such records, or supply such information as required by the law and the regulations, shall, in addition to the other penalties, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

Any person who willfully attempts in any manner to evade or defeat any gift tax shall, in addition to other penalties provided by law, be guilty of a felony and, on conviction thereof, shall be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

Any person who willfully aids or assists in the preparation or presentation of a false or fraudulent notice or return, or procures, counsels, or advises the preparation or presentation of such notice or return, whether such falsity or fraud is with or without the knowledge or consent of the person required to make the notice or return, will be guilty of a felony and, upon conviction thereof, fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution. (See section 3793(b).)

Any person who, in connection with any compromise entered into or offer made under the provisions of section 3761, or who, in connection with any closing agreement under section 3760 (see section 86.69) or the offer to enter into any such agreement, willfully conceals from any officer or employee of the United States any property belonging to the estate of the donor or to any person liable in respect of the tax, or receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement relating to the estate or financial condition of the donor or other person liable in respect of the tax, shall, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both. (See section 3762.)

For penalties imposed for failure to make and file a return, or for fraud with intent to evade tax, which consist of a percentage of

the tax to be added thereto and collected in the same manner as the tax, see sections 1019 and 3612(d) and sections 86.50 and 86.51.

SEC. 3761. COMPROMISES.

(a) **AUTHORIZATION.**—The Commissioner, with the approval of the Secretary, or of the Under Secretary of the Treasury, or of an Assistant Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense; and the Attorney General may compromise any such case after reference to the Department of Justice for prosecution or defense.

(b) **RECORD.**—Whenever a compromise is made by the Commissioner in any case there shall be placed on file in the office of the Commissioner the opinion of the General Counsel for the Department of the Treasury, or of the officer acting as such, with his reasons therefor, with a statement of—

(1) The amount of tax assessed,

(2) The amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and

(3) The amount actually paid in accordance with the terms of the compromise.

(c) **CROSS REFERENCE.**—

For compromises after judgment, see R. S. 3469 (U. S. C., Title 31, § 194).

SEC. 86.57 COMPROMISES.—Offers in compromise should be filed with the appropriate collector of internal revenue. No offer in compromise of tax, interest, and ad valorem penalty collectible as part of the tax will be accepted unless there is a substantial doubt as to either liability or collectibility.

SEC. 1025. TRANSFERRED ASSETS.

(a) **METHOD OF COLLECTION.**—The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in the tax imposed by this chapter (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) **TRANSFEREES.**—The liability, at law or in equity, of a transferee of property of a donor, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed by this chapter.

(2) **FIDUCIARIES.**—The liability of a fiduciary under section 3467 of the Revised Statutes (U. S. C., Title 31, § 192) in respect of the payment of any such tax from the estate of the donor.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) **PERIOD OF LIMITATION.**—The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the donor.

(2) If a court proceeding against the donor for the collection of the tax has been begun within the period provided in paragraph (1),—then within one year after return of execution in such proceeding.

(c) **PERIOD FOR ASSESSMENT AGAINST DONOR.**—For the purposes of this section, if the donor is deceased, the period of limitation for assessment against the donor shall be the period that would be in effect had the death not occurred.

(d) **SUSPENSION OF RUNNING OF STATUTE OF LIMITATIONS.**—The running of the statute of limitations upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under section 1012(a) to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

(e) **PROHIBITION OF SUITS TO RESTRAIN ENFORCEMENT OF LIABILITY OF TRANSFEREE OR FIDUCIARY.**—No suit shall be maintained in any court for the purpose of restraining the assessment or collection of (1) the amount of the liability, at law or in equity, of a transferee of property of a donor in respect of any gift tax, or (2) the amount of the liability of a fiduciary under section 3467 of the Revised Statutes (U. S. C., Title 31, § 192) in respect of any such tax.

(f) **DEFINITION OF "TRANSFEREE".**—As used in this section the term "transferee" includes donee, heir, legatee, devisee, and distributee.

(g) **ADDRESS FOR NOTICE OF LIABILITY.**—In the absence of notice to the Commissioner under section 1026(b) of the existence of a fiduciary relationship, notice of liability enforceable under this section in respect of a tax imposed by this chapter, if mailed to the person subject to the liability at his last known address, shall be sufficient for the purposes of this chapter even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

SEC. 86.58 CLAIMS IN CASES OF TRANSFERRED ASSETS.—The amount for which a transferee of the property of a donor is liable, at law or in equity, and the amount of the personal liability of a fiduciary under section 3467 of the Revised Statutes, as amended by section 518 of the Revenue Act of 1934, 31 U. S. C. 192, in respect of the tax, whether such tax is shown on the return of the donor or determined as a deficiency, shall be assessed against such transferee or such fiduciary, as the case may be, and collected and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in the tax, except as hereinafter provided.

The term "transferee" as used in this section includes among others a donee, heir, legatee, devisee, and distributee.

The period of limitation for assessment of the liability of a transferee or of a fiduciary, is as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the donor.

(2) If a court proceeding against the donor for the collection of the tax has been begun within the period of limitation for the bringing of such proceeding, then within one year after the return of the execution in such proceeding.

For the purpose of determining the period of limitation for assessment against a transferee or a fiduciary, if the donor is deceased, the period of limitation for assessment against the donor shall be the period that would be in effect had the death not occurred.

If a notice of the liability of a transferee or the liability of a fiduciary has been mailed to such transferee or to such fiduciary under the provisions of section 1012(a) (see section 86.39), then the running of the statute of limitations shall be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of The Tax Court of the United States (formerly known as the Board of Tax Appeals), until the decision of The Tax Court becomes final), and for 60 days thereafter.

SEC. 1026. NOTICE OF FIDUCIARY RELATIONSHIP.

(a) FIDUCIARY OF DONOR.—Upon notice to the Commissioner that any person is acting in a fiduciary capacity such fiduciary shall assume the powers, rights, duties, and privileges of the donor in respect of a tax imposed by this chapter (except as otherwise specifically provided and except that the tax shall be collected from the estate of the donor), until notice is given that the fiduciary capacity has terminated.

(b) FIDUCIARY OF TRANSFEREE.—Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 1025, the fiduciary shall assume, on behalf of such person, the powers, rights, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person), until notice is given that the fiduciary capacity has terminated.

(c) MANNER OF NOTICE.—Notice under subsection (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

SEC. 86.59 NOTICE OF FIDUCIARY RELATIONSHIP.—As soon as the Commissioner receives notice that any person is acting in a fiduciary capacity for a donor or a donor's estate, such fiduciary must, except as otherwise specifically provided, assume the powers, rights, duties, and privileges of the donor in respect of the tax. If the person is acting as a fiduciary for a transferee or other person subject to the

liability specified in section 1025 (see section 86.58), such fiduciary is required to assume the powers, rights, duties, and privileges of the transferee or other person under that section. The amount of the tax or liability is, however, not collectible from the estate of the fiduciary but is collectible from the estate of the donor or from the estate of the transferee or other person subject to the liability specified in section 1025. The "notice to the Commissioner" provided for in section 1026 shall be a written notice signed by the fiduciary and filed with the Commissioner. The notice must state the name and address of the person for whom the fiduciary is acting and the nature of the liability of such person; that is, whether it is a liability for the tax, and, if so, the year or years involved, or a liability at law or in equity of a transferee of property of the donor, or a liability of a fiduciary under section 3467 of the Revised Statutes, as amended by section 518 of the Revenue Act of 1934, 31 U. S. C. 192, in respect of the payment of any tax from the estate of the donor. Satisfactory evidence of the authority of the fiduciary to act for such person in the fiduciary capacity must be filed with and made a part of the notice. If the fiduciary capacity exists by order of court, a certified copy of the order may be regarded as such satisfactory evidence. When the fiduciary capacity has terminated, the fiduciary, in order to be relieved of any further duty or liability as such, must file with the Commissioner written notice that the fiduciary capacity has terminated as to him, accompanied by satisfactory evidence of the termination of the fiduciary capacity. The notice of termination should state the name and address of the person, if any, who has been substituted as fiduciary.

If the notice of the fiduciary capacity described in the preceding paragraph is not filed with the Commissioner prior to the sending of notice of a deficiency by registered mail to the last known address of the donor (see section 1012(a)), or the last known address of the transferee or other person subject to liability (see section 1025), no notice of the deficiency will be sent to the fiduciary. In such a case the sending of the notice to the last known address of the donor, transferee, or other person, as the case may be, will be a sufficient compliance with the requirements of the statute, even though such donor, transferee, or other person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence. Under such circumstances if no petition is filed with The Tax Court of the United States (formerly known as the Board of Tax Appeals) before the expiration of the period prescribed for the filing of the petition by the donor, transferee, or other person, the tax, or liability under section 1025, will be assessed immediately upon the

expiration of such period, and demand for payment will be made by the collector. The term "fiduciary" is defined by section 3797(a) (6) to mean guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

SEC. 1027. REFUNDS AND CREDITS. [As ORIGINALLY ENACTED.]

(a) **AUTHORIZATION.**—Where there has been an overpayment of any tax imposed by this chapter, the amount of such overpayment shall be credited against any gift tax then due from the taxpayer, and any balance shall be refunded immediately to the taxpayer.

(b) **LIMITATION ON ALLOWANCE.**—

(1) **PERIOD OF LIMITATION.**—No such credit or refund shall be allowed or made after three years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer.

(2) **LIMIT ON AMOUNT OF CREDIT OR REFUND.**—The amount of the credit or refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the three years immediately preceding the allowance of the credit or refund.

(c) **EFFECT OF PETITION TO BOARD.**—If the Commissioner has mailed to the taxpayer a notice of deficiency under section 1012(a) and if the taxpayer files a petition with the Board of Tax Appeals within the time prescribed in such subsection, no credit or refund in respect of the tax for the calendar year in respect of which the Commissioner has determined the deficiency shall be allowed or made and no suit by the taxpayer for the recovery of any part of such tax shall be instituted in any court except—

(1) As to overpayments determined by a decision of the Board which has become final; and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the Board which has become final; and

(3) As to any amount collected after the period of limitation upon the beginning of distraint or a proceeding in court for collection has expired; but in any such claim for credit or refund or in any such suit for refund the decision of the Board which has become final, as to whether such period has expired before the notice of deficiency was mailed, shall be conclusive.

(d) **OVERPAYMENT FOUND BY BOARD.**—If the Board finds that there is no deficiency and further finds that the taxpayer has made an overpayment of tax in respect of the taxable year in respect of which the Commissioner determined the deficiency, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Board has become final, be credited or refunded to the taxpayer. No such credit or refund shall be made of any portion of the tax unless the Board determines as part of its decision that such portion was paid within three years before the filing of the claim or the filing of the petition, whichever is earlier, or that such portion was paid after the mailing of the notice of deficiency.

SEC. 457. OVERPAYMENT FOUND BY BOARD. [REVENUE ACT OF 1942, TITLE IV, PART II. EFFECTIVE FOR CALENDAR YEAR 1943 AND EACH CALENDAR YEAR THEREAFTER.]

The second sentence of section 1027(d) (relating to overpayment found by the Board of Tax Appeals) is amended by striking out "or the filing of the petition" and inserting in lieu thereof "or the mailing of the notice of deficiency".

SEC. 451. GIFTS TO WHICH AMENDMENTS APPLICABLE. [REVENUE ACT OF 1942, TITLE IV, PART II.]

Except as otherwise expressly provided, the amendments made by this Part shall be applicable only with respect to gifts made in the calendar year 1943, and succeeding calendar years.

SEC. 508. SUIT AGAINST COLLECTOR BAR IN OTHER SUITS. [REVENUE ACT OF 1942.]

Section 3772 (relating to suits) is amended by inserting at the end thereof the following new subsection:

"(d) **SUITS AGAINST COLLECTOR A BAR.**—A suit against a collector (or former collector) or his personal representative for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected shall be treated as if the United States had been a party to such suit in applying the doctrine of *res judicata* in all suits instituted after June 15, 1942, in respect of any internal revenue tax, and in all proceedings in the Board and on review of decisions of the Board where the petition to the Board was filed after such date."

SEC. 3770. AUTHORITY TO MAKE ABATEMENTS, CREDITS, AND REFUNDS.

(a) **TO TAXPAYERS.**—

* * * * *

(2) **ASSESSMENTS AND COLLECTIONS AFTER LIMITATION PERIOD.**—Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim.

SEC. 3775. CREDITS AFTER PERIODS OF LIMITATION.

(a) **PERIOD AGAINST UNITED STATES.**—Any credit against a liability in respect of any taxable year shall be void if any payment in respect of such liability would be considered an overpayment under section 3770(a) (2).

SEC. 3771. INTEREST ON OVERPAYMENTS.

(a) **RATE.**—Interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the rate of 6 per centum per annum.

(b) **PERIOD.**—Such interest shall be allowed and paid as follows:

(1) **CREDITS.**—In the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is

taken, but if the amount against which the credit is taken is an additional assessment of a tax imposed by the Revenue Act of 1921, 42 Stat. 227, or any subsequent Revenue Act, then to the date of the assessment of that amount.

(2) **REFUNDS.**—In the case of a refund, from the date of the overpayment to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(c) **ADDITIONAL ASSESSMENT DEFINED.**—As used in this section the term "additional assessment" means a further assessment for a tax of the same character previously paid in part, and includes the assessment of a deficiency of any income or estate tax imposed by the Revenue Act of 1924, 43 Stat. 253, or by any subsequent Revenue Act.

* * * * *

SEC. 86.60 AUTHORITY FOR ABATEMENT, CREDIT, OR REFUND.—Authority for the credit or refund of an overpayment is contained in section 1027. As to the abatement of a jeopardy assessment by the Commissioner before The Tax Court of the United States (formerly known as the Board of Tax Appeals) renders a decision, see section 86.43.

Section 1014 prohibits the filing of claims for abatement by donors with respect to assessments of the tax. The provisions of section 1014 do not impair the authority of the collectors to file claims with the Commissioner for relief from charges against them for uncollectible items, in accordance with section 3950, which provides:

SEC. 3950. CHARGES AND CREDITS.

(a) **CHARGES.**—Every collector shall be charged with—

(1) **TAXES.**—The whole amount of taxes, whether contained in lists transmitted to him by the Commissioner, or by other collectors, or delivered to him by his predecessor in office, and the additions thereto;

(2) **STAMPS.**—The par value of all stamps deposited with him; and

(3) **MONEYS.**—All moneys collected for penalties, forfeitures, fees, or costs.

(b) **CREDITS.**—Every collector shall be credited with—

(1) **PAYMENTS INTO TREASURY.**—All payments into the Treasury made as provided by law;

(2) **RETURNED STAMPS.**—All stamps returned by him uncanceled to the Treasury;

(3) **TAXES TRANSMITTED TO OTHER COLLECTORS.**—The amount of taxes contained in the lists transmitted in the manner provided in section 3651(b) to other collectors, and by them receipted as therein provided;

(4) **TAXES OF INSOLVENT OR ABSCONDED PERSONS.**—The amount of the taxes of such persons as may have absconded or become insol-

vent, prior to the day when the tax ought, according to the provisions of law, to have been collected ;

(5) **UNCOLLECTED TAXES TRANSFERRED TO SUCCESSOR.**—All uncollected taxes transferred by him or by his deputy acting as collector to his successor in office: *Provided*, That it shall be proved to the satisfaction of the Commissioner, who shall certify the facts to the General Accounting Office, that due diligence was used by the collector ; and

(6) **PROPERTY PURCHASED FOR UNITED STATES.**—The amount of all property purchased by him for the use of the United States, provided he faithfully account for and pay over the proceeds thereof upon a resale of the same as required by law.

SEC. 86.61 CREDIT AND REFUND ADJUSTMENTS.—Overassessments and overpayments of gift taxes will be adjusted by means of certificates of overassessment. Credits or refunds of overpayments on the basis of such certificates of overassessment will be allowed or made even though claim for credit or refund has not been filed. However, credits or refunds may not be allowed or made after the expiration of the statutory period of limitation properly applicable unless prior to the expiration of such period a proper claim therefor has been filed by the donor. The claim, together with appropriate supporting evidence, must be filed in the office of the collector for the district in which the tax was paid. (See section 86.63.) As to interest in case of credits or refunds, see section 3771 of the Internal Revenue Code and section 177(b) of the Judicial Code as amended by Act of June 22, 1936 (28 U. S. C. 284).

SEC. 86.62 CLAIMS BY COLLECTORS.—A collector may present blanket claims for the abatement of certain items which were erroneously assessed. Many of these items fall in a class where the error in assessment is apparent, and the abatement of such assessment by the use of blanket claims serves to relieve the collector of the charge against him for such amounts and to relieve him in an expeditious manner of the duty of collecting from the donor certain amounts which a summary examination clearly shows are not due from the donor. Some of the items included in this class of cases are duplicate assessments, amounts assessed as unidentified collections and later identified, assessments resulting from errors in computation, and amounts assessed as excess collections which are subsequently credited against taxes later found to be due.

In the event an erroneous assessment has been paid, the collector may file a blanket claim for credit of such amounts against any unpaid assessments standing against the donor upon the assessment lists held by the collector. If there are no such unpaid assessments against which credit may be taken, the collector shall submit refund schedules to cover such amounts in accordance with instructions issued by the Commissioner. But no such credit or refund shall be allowed or made

unless allowed or made within the statutory period of limitation properly applicable thereto.

The collector may also present claims for credit of taxes not erroneously assessed but found to be uncollectible. (See section 3950.) In such cases the collector or deputy collector who made the demand for the payment and is conversant with the facts may prepare the claim for credit. Even though the collector is so credited with the amount allowed as uncollectible, nevertheless the obligation to pay still remains upon the person assessed. It is the duty of the collector to use the same diligence to collect the tax after he has received credit for an amount as uncollectible as before the allowance of such credit. Collectors should, therefore, keep a record of all taxes thus credited and of the persons from whom they are due and should enforce payment whenever it is in their power to do so.

SEC. 86.63 CLAIMS FOR CREDIT OR REFUND BY DONORS.—Claims for the crediting or refunding of taxes, interest, penalties, and additions to tax erroneously or illegally collected shall be made on Form 843 and should be filed with the collector of internal revenue, although a claim will not be considered defective solely by reason of the fact that it is not made on the form or that it is filed with the Commissioner of Internal Revenue. A separate claim on such form shall be made for each taxable year.

Claims must set forth in detail and under oath each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof. No credit or refund will be allowed or made after three years from the date of the payment of the tax sought to be credited or refunded, except upon one or more of the grounds set forth in a claim or an amendment thereof filed prior to the expiration of such period. A claim which does not comply with this paragraph will not be considered for any purpose as a claim for credit or refund.

The burden of proof to sustain a claim for credit or refund rests upon the claimant and all facts relied upon in support of the claim must be clearly set forth under oath. Every affidavit, argument, brief, or statement of facts, prepared or filed by an attorney or agent as argument or evidence in the matter of a claim, must have therein a statement signed by such attorney or agent showing whether or not he prepared such document and whether or not the attorney or agent knows of his own knowledge that the facts contained therein are true. When there is a hearing, should the donor not appear in person, his representative who appears must present a properly executed power of attorney and be enrolled to practice before the Treasury Department. (See section 86.27.)

If a return is filed by a donor who subsequently dies and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary or letters of administration, or other similar evidence must be annexed to the claim to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter a refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim showing that the return was filed by the fiduciary and that the latter is still acting. In such cases, if a refund or interest is to be paid, letters testamentary, letters of administration, or other evidence may be required, but should be submitted only upon the receipt of a specific request therefor. If a claim is filed by a fiduciary other than the one by whom the return was filed, the necessary documentary evidence should accompany the claim.

Checks in payment of claims allowed will be drawn in the names of the persons entitled to the money and may be sent to such persons in care of an attorney or agent who has filed a power of attorney specifically authorizing him to receive such checks. The Commissioner may, however, send any such check direct to the claimant. In this connection, see section 3477 of the Revised Statutes (31 U. S. C. 203), the pertinent part of which provides:

All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same.

The Commissioner has no authority to refund on equitable grounds penalties or other amounts legally collected. As to claims for refund of sums recovered by suit, see sections 86.64 and 86.65.

SEC. 86.64 CLAIMS FOR REFUND IN CASE OF JUDGMENT OBTAINED AGAINST COLLECTOR.—(a) Claims for the amount of a judgment against a collector of internal revenue for the recovery of taxes,

penalties, or other sums should be made on Form 843 and filed with the Commissioner of Internal Revenue, Washington, D. C. The claimant should state the grounds of his claim under oath, giving the names of all the parties to the suit, the cause of action, the date of its commencement, the date of the judgment, the court in which it was recovered, and its amount. To this affidavit there should be annexed a certified copy of the final judgment in duplicate, a certificate of probable cause, and an itemized bill of the costs paid, receipted by the clerk or other proper officer of the court. In this connection section 989 of the Revised Statutes (28 U. S. C. 842) provides:

When a recovery is had in any suit or proceeding against a collector or other officer of the revenue for any act done by him, or for the recovery of any money exacted by or paid to him and by him paid into the Treasury in the performance of his official duty, and the court certifies that there was probable cause for the act done by the collector or other officer, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the Government, no execution shall issue against such collector or other officer, but the amount so recovered shall, upon final judgment, be provided for and paid out of the proper appropriation from the Treasury.

(b) If the judgment debtor shall have already paid the amount recovered against him, the claim should be made in his name. A certificate of the clerk of the court in which the judgment was recovered (or other satisfactory evidence), showing that the judgment has been satisfied and specifying the exact sum paid in its satisfaction, with a detail of all items of costs which were paid by the judgment debtor or for which he is liable, should accompany the claim. (See, further, section 86.63.)

SEC. 86.65 CLAIMS FOR REFUND IN CASE OF JUDGMENT OBTAINED AGAINST THE UNITED STATES.—Claims for the payment of judgments rendered by United States district courts and the United States Court of Claims against the United States representing taxes, penalties, or other sums, should be executed on Form 843 in duplicate and filed directly with the Commissioner of Internal Revenue, Washington, D. C. The claimant should state the grounds of his claim under oath, giving the names of all parties to the suit, the cause of action, the date of its commencement, the date of the judgment, the court in which it was recovered, and its amount. To this affidavit there should be annexed two certified copies of the final judgment, and an itemized bill of the costs paid, receipted by the clerk or other proper officer of the court. In the case of a judgment rendered by the Court of Claims, there may be submitted in lieu of a certified copy of the final judgment, a certificate of judgment issued by the clerk of the court and two copies of the court's opinion, if any was rendered.

SEC. 86.66⁷ LIMITATIONS UPON THE CREDITING AND REFUNDING OF TAXES PAID.—(a) Except as provided in (b) of this section, (1) the Commissioner is prohibited from making credits or refunds of the tax after three years from the time the tax was paid unless before the expiration of such 3-year period a claim therefor is filed, and (2) the amount of such credit or refund shall not exceed the portion of the tax paid during the 3-year period immediately preceding the date of the allowance of the credit or refund, or, if the credit or refund is based upon a claim, the amount of the credit or refund shall not exceed the portion of the tax paid during the 3-year period immediately preceding the date of filing such claim.

(b) In any case where a person having a right to file a petition with The Tax Court of the United States (formerly known as the Board of Tax Appeals) with respect to a deficiency in the tax files such petition within the prescribed time, no credit or refund of the tax for the year to which the deficiency relates shall be allowed or made, and no suit for the recovery of any part of such tax shall be instituted by the donor, except that—

(1) If The Tax Court finds that the tax has been overpaid for the year to which the notice of the deficiency relates, if the decision of The Tax Court as to the amount overpaid has become final (see section 1140 of the Internal Revenue Code), and if The Tax Court determines as a part of its decision (i) that, as to gifts made during the calendar year 1943 or thereafter, any portion of the overpayment was made within three years before the filing of the claim for refund or the mailing of the notice of deficiency, whichever is earlier, or, as to gifts made during the calendar year 1940, 1941, or 1942, any portion of the overpayment was made within three years before the filing of the claim or the filing of the petition, whichever is earlier, or (ii) that any portion of the overpayment was made after the mailing of the notice of deficiency, the amount of such portion of the overpayment will be credited or refunded.

(2) In the case of a jeopardy assessment made under section 1013, if the amount which should have been assessed as determined by a decision of The Tax Court which has become final is less than the amount already collected, the excess payment shall be credited or refunded subject to the limitations provided in (b)(1) of this section.

(3) If the amount of the deficiency determined by The Tax Court (in a case where collection has not been stayed by the filing of a bond) is disallowed in whole or in part by the reviewing court, then the overpayment resulting from such disallowance shall be credited or refunded without the making of claim therefor. (See section 1146.)

(4) Where the amount collected is in excess of the amount computed in accordance with the decision of The Tax Court which has be-

come final, the excess payment shall be credited or refunded within the period of limitation provided in section 1027(b).

(5) Where an amount is collected after the statutory period of limitation upon the beginning of distraint or a proceeding in court for collection has expired (see section 86.48), the donor may file a claim for refund of the amount so collected within the period of limitation provided in section 1027(b). In any such case, the decision of The Tax Court as to whether the statutory period upon collection of the tax expired before notice of the deficiency was mailed shall, when the decision becomes final, be conclusive.

SEC. 86.67 CREDITING OF ACCOUNTS OF COLLECTORS IN CASES OF ASSESSMENTS AGAINST SEVERAL PERSONS COVERING SAME LIABILITY.—If assessments have been made against several persons covering the same tax liability, and payment of such liability by one or more of such persons has been duly certified to the Commissioner, the Commissioner, for the purpose of temporarily relieving the collector from liability under section 3950, may authorize him to take credit temporarily with respect to the assessments not specifically paid. Such action, however, shall not constitute an abatement and shall not discharge the liability of the persons concerned.

SEC. 3774. REFUNDS AFTER PERIODS OF LIMITATION.

A refund of any portion of an internal revenue tax (or any interest, penalty, additional amount, or addition to such tax) shall be considered erroneous—

(a) **EXPIRATION OF PERIOD FOR FILING CLAIM.**—If made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed; or

(b) **DISALLOWANCE OF CLAIM AND EXPIRATION OF PERIOD FOR FILING SUIT.**—In the case of a claim filed within the proper time and disallowed by the Commissioner if the refund was made after the expiration of the period of limitation for filing suit, unless—

(1) within such period suit was begun by the taxpayer, or

(2) within such period, the taxpayer and the Commissioner agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of final decision in one or more named cases then pending before the Board of Tax Appeals or the courts. If such agreement has been entered into, the running of such statute of limitations shall be suspended in accordance with the terms of the agreement.

(c) **CROSS REFERENCE.**—

For procedure by the United States to recover erroneous refunds, see section 3746.

SEC. 3775. CREDITS AFTER PERIODS OF LIMITATION.

* * * * *

(b) **PERIOD AGAINST TAXPAYER.**—A credit of an overpayment in respect of any tax shall be void if a refund of such overpayment would be considered erroneous under section 3774.

SEC. 3746. SUITS FOR RECOVERY OF ERRONEOUS REFUNDS.

(a) **REFUNDS AFTER LIMITATION PERIOD.**—Any portion of an internal revenue tax (or any interest, penalty, additional amount, or addition to such tax), refund of which is erroneously made, within the meaning of section 3774, may be recovered by suit brought in the name of the United States, but only if such suit is begun within two years after the making of such refund.

* * * * *

(c) **REFUNDS BASED ON FRAUD OR MISREPRESENTATION.**—Despite the provisions of subsections (a) and (b) such suit may be brought at any time within five years from the making of the refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact.

* * * * *

SEC. 86.68 ERRONEOUS REFUNDS AND CREDITS.—A refund is erroneous when made after the expiration of the period of limitation for filing a claim therefor, unless within such period a claim was filed. In the case where a claim was filed within the proper time and such claim was disallowed by the Commissioner and the period of limitation for filing suit by the donor had expired prior to the making of the refund, a refund is erroneous unless suit was begun by the donor within the period of limitation for filing suit, or unless within such period the donor and the Commissioner agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of the final decision of one or more named cases then pending before The Tax Court of the United States (formerly known as the Board of Tax Appeals) or the courts. Any erroneous refund may be recovered by suit brought in the name of the United States within two years after the refund was made. If it appears that any part of an erroneous refund was induced by fraud or the misrepresentation of a material fact, the entire amount of such refund may be recovered by suit brought in the name of the United States within five years after the refund was made.

Where a refund of an overpayment would be an erroneous refund under the preceding paragraph of this section, a credit of such overpayment allowed against any tax is void. A credit is also void if allowed against a liability the assessment and collection of which was barred by the expiration of the period of limitation properly applicable thereto.

SEC. 3760. CLOSING AGREEMENTS.

(a) **AUTHORIZATION.**—The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commissioner) is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any taxable period.

(b) **FINALITY.**—If such agreement is approved by the Secretary, the Under Secretary, or an Assistant Secretary, within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) The case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

SEC. 86.69 CLOSING AGREEMENTS RELATING TO TAX LIABILITY IN RESPECT OF INTERNAL REVENUE TAXES.—Closing agreements provided for in section 3760 may relate to the total tax liability of the donor, or to one or more separate items affecting such liability. For example, an agreement may be entered into with respect to the total amount of gifts, to deductions, or to the value of property on the date of gift. Accordingly, there may be a series of agreements relating to the tax liability for a single taxable period. Any tax or deficiency in tax determined pursuant to such an agreement shall be assessed and collected, and any overpayment determined pursuant thereto shall be credited or refunded, in accordance with the applicable provisions of the statute. Such agreements are final and conclusive, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact. (See also section 3762.)

SEC. 3467, REVISED STATUTES, AS AMENDED BY SECTION 518 OF THE REVENUE ACT OF 1934 (31 U. S. C. 192). LIABILITY OF FIDUCIARIES.

Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

SEC. 86.70 PERSONAL LIABILITY OF FIDUCIARIES.—Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debts due by a donor or a donor's estate for whom or for which he acts before he satisfies and pays the gift tax due to the United States from such donor, is, to the extent of such payments, personally liable for the payment of such tax.

SEC. 3614. EXAMINATION OF BOOKS AND WITNESSES.

(a) **TO DETERMINE LIABILITY OF THE TAXPAYER.**—The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is authorized, by any officer or employee of the Bureau of Internal Revenue, including

the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

(b) To DETERMINE LIABILITY OF A TRANSFEREE.—The Commissioner, for the purpose of determining the liability at law or in equity of a transferee of the property of any person with respect to any Federal taxes imposed upon such person, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon such liability, and may require the attendance of the transferor or transferee, or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter, with power to administer oaths to such person or persons.

SEC. 3633. JURISDICTION OF DISTRICT COURTS.

(a) To ENFORCE SUMMONS.—If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

* * * * *

SEC. 3800. JURISDICTION OF DISTRICT COURTS TO ISSUE ORDERS, PROCESSES, AND JUDGMENTS.

The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws.

SEC. 3632. AUTHORITY TO ADMINISTER OATHS, TAKE TESTIMONY, AND CERTIFY.

(a) INTERNAL REVENUE PERSONNEL.—

(1) PERSONS IN CHARGE OF ADMINISTRATION OF INTERNAL REVENUE LAWS GENERALLY.—Every collector, deputy collector, internal revenue agent, and internal revenue officer assigned to duty under an internal revenue agent, is authorized to administer oaths and take evidence touching any part of the administration of the internal revenue laws with which he is charged, or where such oaths and evidence are authorized by law or regulation authorized by law to be taken.

* * * * *

(b) **OTHERS.**—Any oath or affirmation required or authorized by any internal revenue law or by any regulations made under authority thereof may be administered by any person authorized to administer oaths for general purposes by the law of the United States, or of any State, Territory, or possession of the United States, or of the District of Columbia, wherein such oath or affirmation is administered, or by any consular officer of the United States. This subsection shall not be construed as an exclusive enumeration of the persons who may administer such oaths or affirmations.

SEC. 86.71 SECURING EVIDENCE; TAKING TESTIMONY.—In order to ascertain the correctness of a return or to determine the liability of a transferee of the property, the Commissioner has power to require the attendance and to take the testimony of the person rendering the return, any employee of such person, a transferee of the property, or any other person having knowledge in the premises. Such persons may be required to produce any relevant book, paper, or other record. This power may be exercised by any revenue agent or inspector designated for the purpose. For penalties, see section 86.56.

SEC. 86.72 POWER TO COMPEL COMPLIANCE.—Where any person is summoned to appear and testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides has power to compel the giving of testimony, the production of books, papers, or data, and to issue any appropriate process, writ, or order.

SEC. 1028. LAWS MADE APPLICABLE.

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this chapter.

SEC. 86.73 LAWS MADE APPLICABLE.—All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are made a part of chapter 4 of the Internal Revenue Code imposing the gift tax for the calendar year 1940 and each calendar year thereafter. For provisions of law and regulations authorizing the postponement by reason of war of the performance of certain acts required or permitted under the gift tax law, see section 507 of the Revenue Act of 1942 and regulations pertaining thereto separately promulgated.

SEC. 1030. DEFINITIONS. [AS ORIGINALLY ENACTED.]

For the purposes of this chapter—

(a) **CALENDAR YEAR.**—The term "calendar year" includes only the calendar year 1932 and succeeding calendar years, and, in the case of the calendar year 1932, includes only the portion of such year after June 6, 1932.

(b) **PROPERTY WITHIN THE UNITED STATES.**—Stock in a domestic corporation owned and held by a nonresident shall be deemed property situated within the United States.

SEC. 458. DEFINITION OF PROPERTY IN UNITED STATES
[REVENUE ACT OF 1942.]

(a) TECHNICAL AMENDMENT TO DEFINITION.—Section 1030(b) is amended to read as follows:

“(b) PROPERTY WITHIN THE UNITED STATES.—Stock in a domestic corporation owned and held by a nonresident not a citizen of the United States shall be deemed property situated within the United States.”

(b) EFFECTIVE DATE OF AMENDMENT.—The amendment made by this section shall be effective as of February 10, 1939.

SEC. 86.74 DEFINITIONS.—(a) *Calendar year*.—The term “calendar year” as used in the gift tax provisions of the Internal Revenue Code includes the portion of the calendar year 1932 after the date of the enactment of the Revenue Act of 1932, i. e., June 6, 1932, and succeeding calendar years.

(b) *Property within the United States*.—Section 1030 provides that stock in a domestic corporation owned and held by a nonresident not a citizen of the United States shall be deemed property situated in the United States for the purposes of the gift tax provisions of the Internal Revenue Code. For regulations relating to situs of property generally, see section 86.18.

(c) *Other definitions*.—For other definitions, see section 3797.

SEC. 1031. PUBLICITY OF RETURNS.

For provisions with respect to publicity of returns under this chapter, see subsection (a) (2) of section 55.

SEC. 1029. RULES AND REGULATIONS.

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter.

SEC. 3791. RULES AND REGULATIONS.

(a) AUTHORIZATION.—

(1) IN GENERAL.—The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this title.

(2) IN CASE OF CHANGE IN LAW.—The Commissioner may make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue.

(b) RETROACTIVITY OF REGULATIONS OR RULINGS.—The Secretary, or the Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the internal revenue laws, shall be applied without retroactive effect.

SEC. 3802. SEPARABILITY CLAUSE.

If any provision of this title, or the application thereof to any person or circumstances, is held invalid, the remainder of the title, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

SEC. 86.75 PROMULGATION OF REGULATIONS.—In pursuance of the Internal Revenue Code, the foregoing regulations are hereby made and promulgated.

NORMAN D. CANN,

Acting Commissioner of Internal Revenue.

Approved: July 30, 1943.

D. W. BELL,

Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register August 2, 1943, 11:58 a. m.)

APPENDIX

INSPECTION OF RETURNS

SEC. 55. [Chapter I.] PUBLICITY OF RETURNS.

(a) PUBLIC RECORD AND INSPECTION.—

* * * * *

(2) (as amended by section 507 of the Second Revenue Act of 1940 and by section 554(d) (1) of the Revenue Act of 1941) And all returns made under this chapter, subchapters A, B, D, and E of chapter 2, subchapter B of chapter 3, chapters 4, 7, 12, and 21, subchapter A of chapter 29, and chapter 30, shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

(3) Whenever a return is open to the inspection of any person a certified copy thereof shall, upon request, be furnished to such person under rules and regulations prescribed by the Commissioner with the approval of the Secretary. The Commissioner may prescribe a reasonable fee for furnishing such copy.

* * * * *

(d) INSPECTION BY COMMITTEES OF CONGRESS.—

(1) COMMITTEES ON WAYS AND MEANS AND FINANCE.—

(A) The Secretary and any officer or employee of the Treasury Department, upon request from the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, or a select committee of the Senate or House specially authorized to investigate returns by a resolution of the Senate or House, or a joint committee so authorized by concurrent resolution, shall furnish such committee sitting in executive session with any data of any character contained in or shown by any return.

(B) Any such committee shall have the right, acting directly as a committee, or by or through such examiners or agents as it may designate or appoint, to inspect any or all of the returns at such times and in such manner as it may determine.

(C) Any relevant or useful information thus obtained may be submitted by the committee obtaining it to the Senate or the House, or to both the Senate and the House, as the case may be.

(2) JOINT COMMITTEE ON INTERNAL REVENUE TAXATION.—The Joint Committee on Internal Revenue Taxation shall have the same right to obtain data and to inspect returns as the Committee on Ways and Means or the Committee on Finance, and to submit any relevant or useful information thus obtained to the Senate, the House of Representatives, the Committee on Ways and Means, or the Committee on Finance. The Committee on Ways and Means or the Committee on Finance may submit such informa-

tion to the House or to the Senate, or to both the House and the Senate, as the case may be.

* * * * *

TREASURY DECISION 4929, AS AMENDED

[Title 26—Internal Revenue—Code of Federal Regulations (1939 Sup.).—Chapter I, Subchapter E, Part 458, Subpart F]

Regulations governing the inspection of certain returns under the Internal Revenue Code.¹

TREASURY DEPARTMENT,
Washington, D. C.

To Collectors of Internal Revenue and Others Concerned:

* * * * *

SUBPART C.—ESTATE AND GIFT TAX RETURNS UNDER THE INTERNAL REVENUE CODE

SEC. 463C.20. *General.*—Estate tax returns and notices and gift tax returns, filed under the Internal Revenue Code, shall be treated as privileged communications and shall not be inspected nor their contents disclosed except as hereinafter provided.

SEC. 463C.21. *Application for inspection.*—Upon application to the collector, internal revenue agent in charge, or Commissioner, an estate tax return or notice may be inspected by the executor, or his successor in office, or by his duly authorized attorney in fact. Upon like application a gift tax return may be inspected by the donor or his duly authorized attorney in fact.

SEC. 463C.22. *Disclosures for investigation purposes.*—An internal revenue officer engaged in an official investigation of an estate tax or gift tax liability may disclose the returned value of any item or the amount of any specific deduction, or other limited information, if such disclosure is necessary in order to verify the same or to arrive at a correct determination of the tax. This right of disclosure, however, is limited to the purposes of the investigation, and in no case extends to such information as the amount of the estate, the amount of tax, or other general data.

SEC. 463C.23. *Inspection by State officials.*—A return or notice may be exhibited, or information contained therein may be disclosed, to an officer of any State, for official use in connection with an estate, inheritance, legacy, succession, gift, or other tax of the State, provided a like cooperation is given by the State to the Commissioner or his representatives for use in the administration of the Federal tax laws. Such officer may also be permitted to inspect schedules, lists, and other statements designed to be supplemental to or to become a part of, the original return, and other records and reports which contain information included or required by statute to be included in the return.

SEC. 463C.24. *Inspection discretionary with Commissioner in certain cases.*—If any other person has a material interest in ascertaining any fact disclosed by the return, or in obtaining information as to the payment of the tax, he may make a written application to the Commissioner for such information, setting forth the nature of his interest and the purpose of the application. Thereupon, the Commissioner may permit an inspection of, or furnish a copy of the return, or may furnish such information as he deems advisable.

¹ Sections 463C.0 to 463C.38 are issued under authority contained in secs. 55(a), 508, 603, 702(a), 1204, and 1604(c) of the Internal Revenue Code (53 Stat. 29, 111, 116, 171, 186).

SUBPART D.—GENERAL PROVISIONS

SEC. 463C.30. *Scope.*—The following provisions, unless otherwise stated, are applicable to all returns referred to in Subparts B and C of these regulations.

SEC. 463C.31. *Permission to inspect.*—The Commissioner, upon written application setting forth fully the reason for the request, may grant permission for the inspection of returns in accordance with these regulations.

SEC. 463C.32. *Treasury Department officials and employees.*—The officers and employees of the Treasury Department whose official duties require inspection of returns may inspect any such returns without making such written application. If the head of a bureau or office in the Treasury Department, not a part of the Internal Revenue Bureau, desires to inspect, or to have an employee in his bureau or office inspect a return, in connection with some matter officially before him, for reasons other than tax administration purposes, the inspection may, in the discretion of the Secretary, be permitted upon written application to him by the head of such bureau or office, showing in detail why the inspection is desired.

SEC. 463C.33. (a) *Inspection by branch of Government other than Treasury Department.*—Except as provided in section 463C.34, if the head of an executive department (other than the Treasury Department), or of any other establishment of the United States Government, desires to inspect or to have some other officer or employee of his branch of the service inspect a return in connection with some matter officially before him, the inspection may, in the discretion of the Secretary of the Treasury, be permitted upon written application to him by the head of such executive department or other Government establishment. The application shall be signed by such head and shall show in detail why the inspection is desired, the name and address of the taxpayer who made the return, and the name and official designation of the person it is desired shall inspect the return. The information obtained under this section and section 463C.32 may be used as evidence in any proceeding, conducted by or before any department or establishment of the United States, or to which the United States is a party.

* * * * *

SEC. 463C.34. *Inspection by Government attorneys.*—Any return shall be open to inspection by a United States attorney or by an attorney of the Department of Justice where necessary in the performance of his official duties. The request for inspection shall be in writing and, except as provided in section 463C.37, shall be addressed to the Commissioner, and shall state the purpose for which inspection is desired. It may be signed by the Attorney General, the Assistant to the Attorney General, an Assistant Attorney General, or a United States attorney.

SEC. 463C.35. *Information returns.*—Information returns, schedules, lists, and other statements designed to be supplemental to, or to become a part of, the returns shall be subject to the same rules and regulations as to inspection as are the returns themselves. In any case where inspection of the return is authorized by these regulations, the Commissioner may, in his discretion, permit inspection of other records and reports which contain information included or required by statute to be included in the return.

SEC. 463C.36. *Place of inspection.*—Generally, returns may be inspected only in the Bureau of Internal Revenue, Washington, D. C., unless such returns are in the custody of a collector of internal revenue or internal revenue agent in charge or the head of a field division of the Technical Staff, in which event

the returns may be inspected in the office of such collector or agent in charge or head of division, but only in the presence of an internal revenue officer, designated by the collector or agent or head of division for that purpose.

SEC. 463C.37. *Applications for inspection.*—Except as provided in section 463C.33, and as hereinafter provided, all applications for permission to inspect returns must be made in writing to the Commissioner of Internal Revenue. When a return is in the custody of a collector of internal revenue or internal revenue agent in charge or the head of a field division of the Technical Staff, such collector or revenue agent in charge or head of division, upon written application to him, is authorized to permit the inspection of such return by a United States attorney, or an attorney in the Department of Justice, or by the taxpayer or his duly authorized attorney in fact, in accordance with these regulations.

* * * * *

HERBERT E. GASTON,
Acting Secretary of the Treasury.

Approved: August 28, 1939.

FRANKLIN D. ROOSEVELT,
The White House.

(Filed with the Division of the Federal Register August 29, 1939, 3:23 p. m.)

**EXECUTIVE ORDER NO. 8230—AUTHORIZING THE INSPECTION OF CERTAIN RETURNS
MADE UNDER THE INTERNAL REVENUE CODE**

By virtue of the authority vested in me by section 55(a) of the Internal Revenue Code (53 Stat. 29), it is hereby ordered that the following-designated returns made under the said Code shall be open to inspection in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in the Treasury Decision relating to the inspection of such returns, approved by me this date:

Income (including income of personal holding companies and unjust enrichment income), excess-profits, capital stock, estate, and gift tax returns, and returns of employment tax on employers under Subchapter C of Chapter 9 of the Internal Revenue Code.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
August 28, 1939.

(Filed with the Division of the Federal Register August 29, 1939, 3:23 p. m.)

TREASURY DECISION 4945

[Title 26—Internal Revenue—Code of Federal Regulations (1939 Sup.).—Chapter I, Subchapter E, Part 458, Subpart H]

Use of original returns open to inspection in accordance with Treasury Decision 4929; furnishing of copies of returns; and in-

spection of returns of corporations by State officers and shareholders.¹

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

Collectors of Internal Revenue and Others Concerned:

* * * * *

SEC. 463D.0. *Introductory.*— * * *

Pursuant to sections 55 * * * and 3791 of the Internal Revenue Code, the following rules and regulations are hereby prescribed with respect to * * * the furnishing of copies of, returns open to inspection in accordance with Treasury Decision 4929, * * *.

* * * * *

GENERAL PROVISIONS

* * * * *

SEC. 463D.5. *Furnishing of copies of returns.*—A copy of a return may be furnished to any person who is entitled to inspect such return upon written application therefor and the submission of evidence satisfactory to the Commissioner of his right to receive the same, except that if a return is in the custody of a collector or an internal revenue agent in charge or the head of a field division of the Technical Staff, such collector or agent in charge or head of division may furnish a copy of such return to a United States attorney or an attorney of the Department of Justice, or to the taxpayer or his duly authorized attorney in fact, in accordance with these regulations. Certified copies will be furnished only upon specific request therefor sent to the Commissioner at Washington.

The Commissioner may prescribe a reasonable fee for furnishing copies of returns.

* * * * *

SEC. 463D.8. *Terms used.*—Any word or term used in these regulations which is defined in any chapter of the Internal Revenue Code shall be given the definition contained in the chapter which is applicable with respect to the particular return made.

SEC. 463D.9. *Prior regulations under Code superseded.*—This Treasury decision supersedes Treasury Decision 4878, approved January 4, 1939, only in so far as such Treasury decision was made applicable by Treasury Decision 4885, approved February 11, 1939, to returns made under the Internal Revenue Code.

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved: September 20, 1939.

JOHN W. HANES,

Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register September 22, 1939, 12:53 p. m.)

¹ Sections 463D.0 to 463D.9 are issued under authority contained in sections 55, 62, 508, 603, 702(a), 1204, 1207, 1604(c), and 3791 of the Internal Revenue Code (53 Stat. 29, 32, 111, 116, 171, 186, 467).

PAYMENT OF TAX WITH UNITED STATES TREASURY NOTES

TREASURY DECISION 5181

[Title 26—Internal Revenue—Code of Federal Regulations (1942 Sup.).—Chapter I, Subchapter E, Part 471]

Regulations governing the acceptance of Treasury notes of Tax Series A-1943, B-1943, A-1944, B-1944, A-1945, and Tax Series C in payment of income (including excess-profits), estate, and gift taxes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

To Collectors of Internal Revenue and Others Concerned:

SEC. 471.1. ACCEPTANCE OF TREASURY NOTES OF TAX SERIES A-1943, B-1943, A-1944, B-1944, A-1945 AND TAX SERIES C, IN PAYMENT OF INCOME (INCLUDING EXCESS-PROFITS), ESTATE, AND GIFT TAXES.—Notes of the United States designated as Treasury Notes of Tax Series A-1943, B-1943, A-1944, B-1944, A-1945, and Treasury notes of Tax Series C may be accepted in payment of income taxes (current and back personal and corporation taxes, and excess-profits taxes) and estate and gift taxes (current and back), at par and interest accrued to the month, inclusive, in which presented (but no accrual beyond the maturity date). Collectors of internal revenue are authorized and directed to accept the notes during and after the second calendar month after the month of purchase (as shown by the issuing agent's dating stamp on each note). For example, a note of Tax Series A-1945 purchased in September 1942 may be accepted in November 1942 but such a note purchased in October 1942 may not be accepted until December 1942. The notes may be accepted only in payment of income (including excess-profits), estate, and gift taxes (current and back) due from the original purchaser thereof or his estate. The notes shall be in the name of the taxpayer (individual, corporation, or other entity) and may be presented for tax payment by only the taxpayer, his agent, or his estate. There is no limit upon the amount of notes of Tax Series B-1943, Tax Series B-1944, or Tax Series C, which may be accepted in payment of income (including excess-profits), estate, or gift taxes. However, not more than \$5,000 in principal amount of notes of Tax Series A-1943, or of Tax Series A-1944, or of Tax Series A-1945, or of any of them in combination, plus the amount of the accrued interest thereon, may be accepted on account of any one taxpayer's liability for income taxes (including excess-profits taxes), or gift taxes, for any taxable year or on account of any one taxpayer's liability for estate tax; but in the case of the income tax this limitation shall apply separately to husband and wife on a joint return and also to an owner before death and to his estate for the balance of the same year. For example, A is liable for income taxes for the calendar year 1942 in the amount of \$24,000 and for gift taxes for the calendar year 1942 in the amount of \$7,000. In March 1943, A presents two notes of Tax Series A-1945 purchased in October 1942 in principal amount of \$5,000 each in payment of 1942 income and gift taxes. The notes may be accepted on account of A's liability for both the income and gift taxes, provided one note be applied to the income tax and the other to the gift tax.

Notes of Tax Series B-1943, Tax Series B-1944, or Tax Series C, inscribed in the name of a taxpayer, may be accepted in payment of income tax withheld at the source by such taxpayer, and such notes inscribed in the name of a taxpayer may be accepted in payment of transferee liability assessed against such tax-

payer for income (including excess-profits), estate or gift taxes; but notes of Tax Series A-1943, Tax Series A-1944, or Tax Series A-1945 shall not be accepted in payment of income tax withheld at the source or of transferee liability.

Collectors of internal revenue shall not in any case allow credit to a taxpayer on account of notes, or accept notes, for an amount greater than their principal amount plus accrued interest, nor shall notes be accepted in an amount (including accrued interest) greater than the unpaid liability of the taxpayer. The notes shall be forwarded to the collector of internal revenue with whom the tax return is filed, at the risk and expense of the taxpayer, and, for the taxpayer's protection, should be forwarded by registered mail, if not presented in person. (Secs. 3657 and 3791 of the Internal Revenue Code (53 Stat. 447, 467, 26 U. S. C., 1940 ed., 3657, 3791) and sec. 18 of the Second Liberty Bond Act of 1917, as amended (40 Stat. 1309, 31 U. S. C., 1940 ed., 753).)

SEC. 471.2. PROCEDURE WITH RESPECT TO TREASURY NOTES OF TAX SERIES A-1943, B-1943, A-1944, B-1944, A-1945 AND TAX SERIES C.—Deposits of Treasury notes of Tax Series A-1943, B-1943, A-1944, B-1944, A-1945, and Treasury notes of Tax Series C, received in payment of taxes shall be made by the collector of internal revenue in a Federal reserve bank or a branch Federal reserve bank. Prior to deposit the collector of internal revenue will certify on the reverse side of the notes that they were received in payment of income (including excess-profits), estate, or gift tax, as the case may be, and will show in the endorsement stamp the date of deposit. (Secs. 3657 and 3791 of the Internal Revenue Code (53 Stat. 447, 467, 26 U. S. C., 1940 ed., 3657, 3791) and sec. 18 of the Second Liberty Bond Act of 1917, as amended (40 Stat. 1309, 31 U. S. C., 1940 ed., 753).)

SEC. 471.3. PRIOR TREASURY DECISION SUPERSEDED.—Treasury Decision 5109 is hereby superseded. (Secs. 3657 and 3791 of the Internal Revenue Code (53 Stat. 447, 467, 26 U. S. C., 1940 ed., 3657, 3791) and sec. 18 of the Second Liberty Bond Act of 1917, as amended (40 Stat. 1309, 31 U. S. C., 1940 ed., 753).)

NORMAN D. CANN,

Acting Commissioner of Internal Revenue.

Approved: November 17, 1942

D. W. BELL,

Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register November 18, 1942, 10:55 a. m.)

STATUTES OF LIMITATIONS AS AFFECTED BY PERIOD OF MILITARY SERVICE

SEC. 205. (Soldiers' and Sailors' Civil Relief Act of 1940.)

The period of military service shall not be included in computing any period now or hereafter to be limited by any law for the bringing of any action by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action shall have accrued prior to or during the period of such service. (Oct. 17, 1940, c. 888, sec. 205, 54 Stat. 1181.)

LIST OF THE DIVISIONS AND LOCATIONS OF OFFICES OF INTERNAL REVENUE AGENTS IN CHARGE

(Communications should be addressed:

United States Internal Revenue Agent in Charge,

-----,-----)

City

State

Territory embraced	Name of division	Location of office
Alabama-----	Nashville-----	Nashville, Tenn.
Alaska-----	Seattle-----	Seattle, Wash.
Arizona-----	Los Angeles-----	Los Angeles, Calif.
Arkansas-----	Oklahoma-----	Oklahoma City, Okla.
California:		
Counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Con- tra Costa, Del Norte, El- dorado, Fresno, Glenn, Humboldt, Inyo, Kings, Lake, Lassen, Madera, Marin, Mariposa, Men- docino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joa- quin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanis- laus, Sutter, Tulare, Tehama, Trinity, Tuo- lumne, Yolo, and Yuba.	San Francisco-----	San Francisco, Calif.
Counties of Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura.	Los Angeles-----	Los Angeles, Calif.
Colorado-----	Denver-----	Denver, Colo.
Connecticut-----	New Haven-----	New Haven, Conn.
Delaware-----	Baltimore-----	Baltimore, Md.
District of Columbia-----	do-----	Do.
Florida-----	Jacksonville-----	Jacksonville, Fla.
Georgia-----	Atlanta-----	Atlanta, Ga.
Hawaii-----	Honolulu-----	Honolulu, Hawaii.
Idaho-----	Salt Lake-----	Salt Lake City, Utah.
Illinois:		
Counties of Boone, Bureau, Carroll, Cook, De Kalb, Du Page, Grundy, Henry, Jo Daviss, Kane, Kanka- kee, Kendall, Lake, La Salle, Lee, McHenry, Marshall, Mercer, Ogle, Putnam, Rock Island, Stark, Stephenson, Whiteside, Will, and Winnebago.	Chicago-----	Chicago, Ill.

**LIST OF THE DIVISIONS AND LOCATIONS OF OFFICES OF INTERNAL
REVENUE AGENTS IN CHARGE—Continued**

Territory embraced	Name of division	Location of office
Illinois—Continued. Counties of Adams, Alexander, Bond, Brown, Calhoun, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson, Iroquois, Jackson, Jasper, Jefferson, Jersey, Johnson, Knox, Lawrence, Livingston, Logan, McDonough, McLean, Macon, Macoupin, Madison, Marion, Mason, Massac, Menard, Monroe, Montgomery, Morgan, Moultrie, Peoria, Perry, Piatt, Pike, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Sangamon, Schuyler, Scott, Shelby, Tazewell, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Williamson, and Woodford.	Springfield-----	Springfield, Ill.
Indiana-----	Indianapolis-----	Indianapolis, Ind.
Iowa-----	Omaha-----	Omaha, Nebr.
Kansas-----	Wichita-----	Wichita, Kans.
Kentucky-----	Louisville-----	Louisville, Ky.
Louisiana-----	New Orleans-----	New Orleans, La.
Maine-----	Boston-----	Boston, Mass.
Maryland-----	Baltimore-----	Baltimore, Md.
Massachusetts-----	Boston-----	Boston, Mass.
Michigan-----	Detroit-----	Detroit, Mich.
Minnesota-----	St. Paul-----	St. Paul, Minn.
Mississippi-----	New Orleans-----	New Orleans, La.
Missouri-----	St. Louis-----	St. Louis, Mo.
Montana-----	Salt Lake-----	Salt Lake City, Utah.
Nebraska-----	Omaha-----	Omaha, Nebr.
Nevada-----	San Francisco-----	San Francisco, Calif.
New Hampshire-----	Boston-----	Boston, Mass.
New Jersey-----	Newark-----	Newark, N. J.
New Mexico-----	Denver-----	Denver, Colo.
New York:		
Counties of Kings, Nassau, Queens, Richmond, and Suffolk.	Brooklyn-----	Brooklyn, N. Y.
Manhattan Island south of Twenty-third Street.	Second New York---	New York, N. Y.

LIST OF THE DIVISIONS AND LOCATIONS OF OFFICES OF INTERNAL REVENUE AGENTS IN CHARGE—Continued.

Territory embraced	Name of division	Location of office
<p>New York—Continued.</p> <p>Manhattan Island north of Twenty-third Street (including both sides of Twenty-third Street and Blackwells Island, Rاندalls Island, and Wards Island), and counties of Albany, Bronx (formerly the twenty-third and twenty-fourth wards of New York City), Clinton, Columbia, Dutchess, Essex, Fulton, Greene, Hamilton, Montgomery, Orange, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, Washington, and Westchester.</p>	Upper New York----	New York, N. Y.
<p>Counties of Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Cortland, Delaware, Erie, Franklin, Genesee, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, St. Lawrence, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Wyoming, and Yates.</p>	Buffalo-----	Buffalo, N. Y.
<p>North Carolina-----</p>	Greensboro-----	Greensboro, N. C.
<p>North Dakota-----</p>	St. Paul-----	St. Paul, Minn.
<p>Ohio:</p>	Cincinnati-----	Cincinnati, Ohio.
<p>Counties of Adams, Athens, Brown, Butler, Clark, Clermont, Clinton, Coshocton, Delaware, Fairfield, Fayette, Franklin, Gallia, Greene, Guernsey, Hamilton, Highland, Hocking, Jackson, Knox, Lawrence, Licking, Madison, Marion, Meigs, Miami, Montgomery, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Preble, Ross, Scioto, Union, Vinton, Warren, and Washington.</p>		

**LIST OF THE DIVISIONS AND LOCATIONS OF OFFICES OF INTERNAL
REVENUE AGENTS IN CHARGE—Continued.**

Territory embraced	Name of division	Location of office
Ohio—Continued. Counties of Allen, Ashland, Ashtabula, Auglaize, Belmont, Carroll, Champaign, Columbiana, Crawford, Cuyahoga, Darke, Defiance, Erie, Fulton, Geauga, Hancock, Hardin, Harrison, Henry, Holmes, Huron, Jefferson, Lake, Logan, Lorain, Lucas, Mahoning, Medina, Mercer, Monroe, Ottawa, Paulding, Portage, Putnam, Richland, Sandusky, Seneca, Shelby, Stark, Summit, Trumbull, Tuscarawas, Van Wert, Wayne, Williams, Wood, and Wyandot.	Cleveland-----	Cleveland, Ohio.
Oklahoma-----	Oklahoma-----	Oklahoma City, Okla.
Oregon-----	Seattle-----	Seattle, Wash.
Pennsylvania:		
Counties of Adams, Bedford, Berks, Blair, Bradford, Bucks, Carbon, Centre, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York.	Philadelphia-----	Philadelphia, Pa.
Counties of Allegheny, Armstrong, Beaver, Butler, Cambria, Cameron, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, and Westmoreland.	Pittsburgh-----	Pittsburgh, Pa.
Rhode Island-----	New Haven-----	New Haven, Conn.
South Carolina-----	Columbia-----	Columbia, S. C.
South Dakota-----	St. Paul-----	St. Paul, Minn.
Tennessee-----	Nashville-----	Nashville, Tenn.
Texas-----	Dallas-----	Dallas, Tex.

**LIST OF THE DIVISIONS AND LOCATIONS OF OFFICES OF INTERNAL
REVENUE AGENTS IN CHARGE—Continued.**

Territory embraced	Name of division	Location of office
Utah.....	Salt Lake.....	Salt Lake City, Utah.
Vermont.....	Boston.....	Boston, Mass.
Virginia.....	Richmond.....	Richmond, Va.
Washington.....	Seattle.....	Seattle, Wash.
West Virginia.....	Huntington.....	Huntington, W. Va.
Wisconsin.....	Milwaukee.....	Milwaukee, Wis.
Wyoming.....	Denver.....	Denver, Colo.

LIST OF THE FIELD DIVISIONS AND LOCATION OF OFFICES OF THE TECHNICAL STAFF

Name of division	Territorial jurisdiction	Location of office
New England-----	Maine, Massachusetts, New Hampshire, and Vermont.	Boston, Mass.
New York-----	Connecticut and Rhode Island.	New Haven, Conn.
	New York State:	
	Territory under Brooklyn, Second New York, and Upper New York (Revenue Agents') Divisions.*	New York, N. Y.
	Territory under Buffalo (Revenue Agents') Division.*	Buffalo, N. Y.
Eastern-----	New Jersey-----	Newark, N. J.
	Pennsylvania:	
	Territory under Philadelphia (Revenue Agents') Division.*	Philadelphia, Pa.
	Territory under Pittsburgh (Revenue Agents') Division.*	Pittsburgh, Pa.
Atlantic-----	Maryland, Delaware, and District of Columbia.	Baltimore, Md.
	Virginia-----	Richmond, Va.
	West Virginia-----	Huntington, W. Va.
	North Carolina-----	Greensboro, N. C.
Southern-----	South Carolina and Georgia-----	Atlanta, Ga.
	Florida-----	Jacksonville, Fla.
	Alabama-----	Birmingham, Ala.
	Tennessee-----	Nashville, Tenn.
Central-----	Michigan-----	Detroit, Mich.
	Ohio:	
	Territory under Cleveland (Revenue Agents') Division.*	Cleveland, Ohio.
	Territory under Cincinnati (Revenue Agents') Division.*	Cincinnati, Ohio.
	Kentucky-----	Louisville, Ky.
Chicago-----	Illinois-----	Chicago, Ill.
	Wisconsin-----	Milwaukee, Wis.
	Indiana-----	Indianapolis, Ind.
	Minnesota, North Dakota, and South Dakota.	St. Paul, Minn.
Western-----	Missouri-----	St. Louis, Mo., and Kansas City, Mo.
	Kansas-----	Wichita, Kans.
	Nebraska and Iowa-----	Omaha, Nebr.
	Colorado, New Mexico, and Wyoming.	Denver, Colo.
Southwestern-----	Mississippi and Louisiana-----	New Orleans, La.
	Oklahoma and Arkansas-----	Oklahoma City, Okla.
	Texas-----	Dallas, Tex., and Houston, Tex.

**LIST OF THE FIELD DIVISIONS AND LOCATION OF OFFICES OF THE
TECHNICAL STAFF—Continued.**

Name of division	Territorial jurisdiction	Location of office
Pacific-----	Counties of California under San Francisco (Revenue Agents') Division,* and Idaho, Montana, Nevada, Utah, and Hawaii.	San Francisco, Calif.
	Counties of California under Los Angeles (Revenue Agents') Division,* and Arizona.	Los Angeles, Calif.
	Washington and Alaska-----	Seattle, Wash.
	Oregon-----	Portland, Oreg.

*For territory included in revenue agents' divisions see separate list appearing in this Appendix.

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U. S. TREASURY DEPARTMENT
BUREAU OF INTERNAL REVENUE

REGULATIONS 90
RELATING TO THE
EXCISE TAX
ON EMPLOYERS
UNDER TITLE IX OF THE
SOCIAL SECURITY ACT



UNITED STATES
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ANNOUNCEMENT OF 1936 BULLETIN SERVICE

The Internal Revenue Bulletin service for 1936 will consist of weekly bulletins and semiannual cumulative bulletins.

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INTRODUCTORY

These regulations deal with the excise tax imposed on employers by Title IX of the Social Security Act approved August 14, 1935 (Public, No. 271, Seventy-fourth Congress). The regulations have been divided into chapters. The material to be found in each chapter is shown in the Table of Contents.

Chapter I defines terms that are used in the Act and in these regulations.

Chapter II deals with the nature, scope, and imposition of the tax.

Chapter III deals with returns and records.

Chapter IV deals with payment of the tax.

Chapter V deals with miscellaneous administrative provisions incident to the assessment, collection, refund and credit of the tax, and to penalties.

For convenient reference, Titles VII, IX, and XI of the Act and certain applicable provisions of internal revenue laws of particular importance are printed in Appendix A and Appendix B, respectively.

REGULATIONS 90
RELATING TO THE
EXCISE TAX ON EMPLOYERS
UNDER TITLE IX OF THE
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CHAPTER I

DEFINITIONS

SECTION 1101 (a) AND (b) OF THE ACT

(a) When used in this Act—

(1) The term “State” (except when used in section 531) includes Alaska, Hawaii, and the District of Columbia.

(2) The term “United States” when used in a geographical sense means the States, Alaska, Hawaii, and the District of Columbia.

(3) The term “person” means an individual, a trust or estate, a partnership, or a corporation.

(4) The term “corporation” includes associations, joint-stock companies, and insurance companies.

(5) The term “shareholder” includes a member in an association, joint-stock company, or insurance company.

(6) The term “employee” includes an officer of a corporation.

(b) The terms “includes” and “including” when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

SECTION 907 OF THE ACT

When used in this title—

(a) The term “employer” does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were in his employ for some portion of the day (whether or not at the same moment of time) was eight or more.

(b) The term “wages” means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.

(c) The term “employment” means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively

for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) The term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(e) The term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation.

(f) The term "contributions" means payments required by a State law to be made by an employer into an unemployment fund, to the extent that such payments are made by him without any part thereof being deducted or deductible from the wages of individuals in his employ.

ARTICLE 1. General definitions.—As used in these regulations—

(a) The terms defined in the above provisions of law shall have the meanings so assigned to them.

(b) The term "Act" means the Social Security Act (Public, No. 271, Seventy-fourth Congress).

(c) The term "tax" means the excise tax imposed by Title IX of the Act.

(d) The term "taxable year" means any calendar year after the calendar year 1935.

(e) The term "Secretary" means the Secretary of the Treasury.

(f) The term "Commissioner" means the Commissioner of Internal Revenue.

(g) The term "collector" means collector of internal revenue.

(h) The term "taxpayer" means any person subject to the tax.

(i) The term "Social Security Board" means the board established pursuant to Title VII of the Act.

CHAPTER II

NATURE, SCOPE, AND IMPOSITION OF THE TAX

SECTION 901 OF THE ACT

On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year:

(1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum;

(2) With respect to employment during the calendar year 1937 the rate shall be 2 per centum;

(3) With respect to employment after December 31, 1937, the rate shall be 3 per centum.

ART. 200. Nature of tax.—The tax is an excise tax imposed on employers with respect to having individuals in their employ.

ART. 201. Measure of tax.—(a) The measure of the tax is the total amount of wages payable by an employer with respect to employment during the calendar year, regardless of the time of actual payment.

(b) Wages are *payable* within the meaning of the Act and these regulations (1) if there is an obligation at any time to pay wages with respect to employment during the calendar year, or (2) if, at any time, wages are actually paid with respect to employment during the calendar year. It is immaterial whether such wages are certain in amount at any time within the calendar year, and whether the right exists to enforce the payment of such wages at any time within the calendar year. (See article 207 relating to wages, article 209(a) relating to estimates of wages, and article 210 relating to adjustments of tax.)

ART. 202. Rate and computation of tax.—The rates of tax applicable for the respective calendar years are as follows:

	Per cent
For the calendar year 1936.....	1
For the calendar year 1937.....	2
For the calendar year 1938 and any subsequent calendar year.....	3

The tax for any calendar year is computed by applying the rate for that year to the total wages *payable* by the employer with respect to employment during such year. (See article 201.)

SECTION 907 OF THE ACT

(a) The term "employer" does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were in his employ for some portion of the day (whether or not at the same moment of time) was eight or more.

(c) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except * * *

ART. 203. Persons liable for the tax.—Every person who is an "employer," as defined by the Act, is liable for the tax.

Generally, a person is an "employer" if he employs 8 or more individuals on each of some 20 days during a calendar year, each such day being in a different calendar week. (See article 204.)

Certain services, however, are specifically excepted by the Act and to the extent that a person employs individuals who render such services, he is not an "employer." (See articles 206 to 206(7), inclusive.)

Even if an "employer" is not subject to any State unemployment insurance law, he is nevertheless subject to the tax. However, if he is subject to such a State law, he is entitled to credit against the tax any contributions with respect to employment paid by him thereunder to the extent permitted by section 902. (See article 211.)

ART. 204. Who are employers.—Commencing with the calendar year 1936, any person who employs 8 or more individuals (in an employment as defined in section 907(c) of the Act) on a total of 20 or more calendar days during a calendar year, each such day being in a different calendar week, is an employer subject to the tax imposed with respect to such year.

The several weeks in each of which occurs a day on which eight or more individuals are employed need not be consecutive weeks. It is not necessary that the individuals so employed be the same individuals; they may be different individuals on each such calendar day. Neither is it necessary that the eight or more individuals be employed at the same moment of time or for any particular length of time or on any particular basis of compensation. It is sufficient if the total number of individuals employed during the 24 hours of a calendar day is eight or more, regardless of the period of service during that day or the basis of compensation.

In determining whether a person employs a sufficient number of individuals to be an employer subject to the tax, no individual is counted unless he is engaged in the performance within the United States of services not excepted by section 907(c). (See articles 206 to 206(7), inclusive.)

ART. 205. Employed individuals.—An individual is in the employ of another within the meaning of the Act if he performs services in

an employment as defined in section 907(c). However, the relationship between the individual who performs such services and the person for whom such services are rendered must, as to those services, be the legal relationship of employer and employee. The Act makes no distinction between classes or grades of employees. Thus, superintendents, managers, and other superior employees are employees within the meaning of the Act.

The words "employ," "employer," and "employee," as used in this article, are to be taken in their ordinary meaning. An employer, however, may be an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization, group, or entity. An employer may be a person acting in a fiduciary capacity or on behalf of another, such as a guardian, committee, trustee, executor or administrator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, or conservator.

Whether the relationship of employer and employee exists, will in doubtful cases be determined upon an examination of the particular facts of each case.

Generally the relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to *what* shall be done but *how* it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor, not an employee.

If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if two individuals in fact stand in the relation of employer and employee to each other, it is of no consequence that the employee is designated as a partner, coadventurer, agent, or independent contractor.

The measurement, method, or designation of compensation is also immaterial, if the relationship of employer and employee in fact exists.

Individuals performing services as independent contractors are not employees. Generally, physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees.

An officer of a corporation is an employee of the corporation, but a director, as such, is not. A director may be an employee of the corporation, however, if he performs services for the corporation other than those required by attendance at and participation in meetings of the board of directors.

SECTION 907(c) OF THE ACT

The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except * * *.

ART. 206. Excepted services generally.—(a) To constitute an "employment" within the meaning of the Act the services performed by the employee must be performed within the United States, that is, within any of the several States, the District of Columbia, or the Territories of Alaska and Hawaii.

To the extent that an employee performs services outside of the United States for the person who employs him, he is not in an "employment" within the meaning of the Act, and to that extent he will not be counted for the purpose of determining whether the person who employs him is an "employer," within the meaning of the Act. Furthermore, remuneration payable to the employee for services which he performs outside of the United States is excluded from the computation of wages upon which his employer's tax is based. However, if any services are performed by the employee within the United States, such services, unless specifically excepted by the Act (see articles 206(1) to 206(7), inclusive), constitute "employment." In such case the employee is counted for the purpose of determining whether the person who employs him is an "employer," within the meaning of the Act, and the wages payable to the employee on account of such services are included in the computation of wages for the purpose of determining the amount of the employer's tax.

The place where the contract for services is entered into and the citizenship or residence of the employee or of the person who employs him are immaterial. Thus, the employee and the person who

employs him may be citizens and residents of a foreign country and the contract for the services may be entered into in a foreign country, and yet, if the employee under such contract actually performs services within the United States, there is to that extent an "employment" within the meaning of the Act, and the person who has employed such individual may be an "employer" within the meaning of the Act.

(b) Even though the services of the employee are performed within the United States, if they are in a class which is excepted by the Act they are excluded for the purpose (1) of determining whether a person employs a sufficient number of individuals to be an employer subject to the tax, and (2) of computing the total wages payable with respect to employment during the calendar year.

The exception attaches to the services performed by the employee and not to the employee as an individual; and the exception applies only for the period during which the individual is rendering services in an excepted class.

Example: A, who operates a farm and also a grocery store, employs B for \$10 a week. B works on the farm five days of the week and works for one day of the week as a clerk in the grocery store. If the services which B performs on the farm constitute "agricultural labor" (see article 206(1)), such services are excepted by the Act; the services performed as a clerk in the grocery store, however, are not excepted. Therefore, the time during which B works on the farm is not considered in determining whether A is an "employer," but the time during which B is working in the grocery store is so considered. Also, if A is an "employer," in computing the amount of wages payable, the part of the weekly salary of \$10 which is attributable to the work on the farm is disregarded, while the amount which is attributable to the work performed in the grocery store is included.

SECTION 907(c) OF THE ACT

The term "employment" means any service * * * except—

(1) Agricultural labor; * * *

ART. 206(1). Agricultural labor.—The term "agricultural labor" includes all services performed—

(a) By an employee, on a farm, in connection with the cultivation of the soil, the harvesting of crops, or the raising, feeding, or management of live stock, bees, and poultry; or

(b) By an employee in connection with the processing of articles from materials which were produced on a farm; also the packing, packaging, transportation, or marketing of those materials or articles. Such services do not constitute "agricultural labor," however, unless they are performed by an employee of the owner or tenant of the

farm on which the materials in their raw or natural state were produced, and unless such processing, packing, packaging, transportation, or marketing is carried on as an incident to ordinary farming operations as distinguished from manufacturing or commercial operations.

As used herein the term "farm" embraces the farm in the ordinarily accepted sense, and includes stock, dairy, poultry, fruit, and truck farms, plantations, ranches, ranges, and orchards.

Forestry and lumbering are not included within the exception.

SECTION 907(c) OF THE ACT

The term "employment" means any service * * * except—

(2) Domestic service in a private home;

ART. 206(2). Domestic service.—Services of a household nature performed by an employee in or about the private home of the person by whom he is employed are within the above exception.

A private home is the fixed place of abode of an individual or family.

If the home is utilized primarily for the purpose of supplying board or lodging to the public as a business enterprise, it ceases to be a private home.

In general, services of a household nature in or about a private home include services rendered by cooks, maids, butlers, valets, laundresses, furnacemen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use.

The services above enumerated are not within the exception if performed in or about rooming or lodging houses, boarding houses, fraternity houses, clubs, hotels, or commercial offices or establishments.

SECTION 907(c) OF THE ACT

The term "employment" means any service * * * except—

(3) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

ART. 206(3). Officers and members of crews.—The expression "navigable waters of the United States" means such waters as are navigable in fact and which by themselves or their connection with other waters form a continuous channel for commerce with foreign countries or among the States.

The word "vessel" includes every description of watercraft or other contrivance, used as a means of transportation on water. It does not include any type of aircraft.

The expression "officers and members of the crew" includes the master or officer in charge of the vessel, however designated, and every individual, subject to his authority, serving on board and contributing in any way to the operation and welfare of the vessel.

The exception extends, for example, to services rendered by the master, mates, pilots, pursers, surgeons, stewards, engineers, firemen, cooks, clerks, carpenters, deck hands, porters, and chambermaids, and by seal hunters and fishermen on sealing and fishing vessels.

SECTION 907 (c) OF THE ACT

The term "employment" means any service * * * except—

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

ART. 206(4). Family employment.—Under section 907 (c) (4) certain services are excepted because of the existence of a family relationship between the employee and the person for whom he performs the services. The exceptions are as follows:

(a) Services performed by a husband for his wife, or by a wife for her husband;

(b) Services performed by a father or mother for a son or daughter;

(c) Services performed by a son or daughter under 21 years of age for the father or mother.

Under (a) and (b) the exception is conditioned solely upon the relationship of the employer to the employee. Under (c), in addition to the relationship of parent and child, there is a further requirement that the child shall be under the age of 21, and the exception continues only during the time that such child is under the age of 21.

Services performed by an employee of a corporation, partnership, or other entity, are not within the exception.

SECTION 907 (c) OF THE ACT

The term "employment" means any service * * * except—

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

ART. 206(5)-(6). Government employees.—Services performed by Federal and State employees are excepted. The exception extends to every service performed by an individual in the employ of the United States, the several States, the District of Columbia, or the Territory of Alaska or Hawaii, or any political subdivision or instrumentality thereof, including every unit or agency of government, without distinction between those exercising functions of a governmental nature and those exercising functions of a proprietary nature.

SECTION 907 (c) OF THE ACT

The term "employment" means any service * * * except—

(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

ART. 206(7). Religious, charitable, scientific, literary, and educational organizations and community chests.—Services performed by any employee of an organization of the class specified in section 907(c) (7) are excepted.

For the purpose of the exception the nature of the service is immaterial; the statutory test is the character of the organization for which the service is performed.

In all cases, in order to establish its status under the statutory classification, the organization must meet two tests:

- (1) It must be organized and operated exclusively for one or more of the specified purposes; and
- (2) Its net income must not inure in whole or in part to the benefit of private shareholders or individuals.

Corporations or other institutions organized and operated exclusively for charitable purposes comprise, in general, organizations for the relief of the poor. The fact that an organization established for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily affect its status under the law.

An educational organization within the meaning of the Act is one designed primarily for the improvement or development of the capabilities of the individual, but, under exceptional circumstances, may include an association whose sole purpose is the instruction of the public, or an association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community, even though an association of either class has incidental amusement features. An organization formed, or availed of, to disseminate controversial or partisan propaganda or which by any substantial part of its activities attempts to influence legislation is not an educational organization within the meaning of section 907 (c) (7) of the Act.

Since a corporation or other institution to be within the prescribed class must be organized and operated exclusively for one or more of the specified purposes, an organization which has certain religious purposes and also manufactures and sells articles to the public for

profit is not within the statutory class even though its property is held in common and its profits do not inure to the benefit of individual members of the organization.

An organization otherwise within the statutory class does not lose its status as such by receiving income such as rent, dividends and interest from investments, provided such income is devoted exclusively to one or more of the purposes specified in section 907(c) (7) of the Act.

Money contributed by members of an organization to a common fund to be applied to the relief of the particular members of the organization or their families when in sickness, unemployed, in want, or under other disability, is not a charitable fund.

If an organization has established its status under the law, it need not thereafter make a return or any further showing with respect to its status unless it changes the character of its organization or operations or the purpose for which it was originally created. Collectors will keep a list of all such organizations, to the end that they may occasionally inquire into their status and ascertain whether they are observing the conditions upon which their classification is predicated.

SECTION 901 OF THE ACT

On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year; * * *

SECTION 907(b) OF THE ACT

The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.

ART. 207. Wages.—The term "wages" means all remuneration for employment, whether payable in money or something other than money. The name by which such remuneration is designated is immaterial. Thus, salaries, commissions on sales or on insurance premiums, fees, and bonuses are wages within the meaning of the Act if payable by an employer to his employee as compensation for services not excepted by the Act. The basis upon which the remuneration is payable, the amount of remuneration, and the time of payment, are immaterial in determining whether the remuneration constitutes "wages." Thus, it may be payable on the basis of piecework, or a percentage of profits; and it may be payable hourly, daily, weekly, monthly, or annually.

The medium in which the remuneration is payable is also immaterial. It may be payable in cash or in something other than cash, such as goods, lodging, food, and clothing.

Ordinarily, facilities or privileges (such as entertainment, cafeterias, restaurants, medical services, or so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as remuneration for services if such facilities or privileges are offered or furnished by the employer merely as a convenience to the employer or as a means of promoting the health, good will, contentment, or efficiency of his employees.

ART. 208. Exclusion from wages.—Excluded from the computation of wages is all remuneration payable by an employer to an employee for services which are excepted by section 907(c), or which are performed outside of the United States. (See articles 206 to 206(7), inclusive.)

ART. 209. Items included as wages.—(a) *General.*—The total wages payable by an employer to his employees with respect to employment during any calendar year shall include (A) items payable and actually paid during that calendar year and (B) items payable but not actually paid during that calendar year.

(A) Items actually paid shall include:

(1) Cash; and

(2) The fair value, at the time of payment, of all items other than money.

(B) Items payable but not actually paid shall include:

(1) The amount of all remuneration agreed by the employer to be paid to the employee; and

(2) The fair and reasonable value of all services performed with respect to employment during the calendar year, if there is no agreement between the employer and the employee as to the amount of remuneration for such services; and

(3) The fair estimated amount of all remuneration, if the basis of such remuneration has been agreed upon between the employer and the employee but the exact amount ultimately to be paid can not be determined until a subsequent year; and

(4) The pro rata or other amount, fairly estimated or allocated, of the total remuneration agreed to be paid by the employer to the employee, if such total remuneration is for services rendered in part in the calendar year and in part in a different year or years.

(5) When remuneration for services performed in a calendar year is paid, or when an obligation to pay such remuneration arises, in a subsequent calendar year, the employer is required to advise the collector under oath of the amount thereof (if not reported in the return for the calendar year during which the services were performed)

and to pay any tax with respect thereto at the rate in effect for the calendar year during which the services were performed. (See article 210(b).)

(b) *Dismissal wages*.—Payment to an employee of so-called dismissal wages, vacation allowances, or sick pay, constitutes wages.

(c) *Traveling and other expenses*.—Amounts paid to traveling salesmen or other employees as allowance or reimbursement for traveling or other expenses incurred in the business of the employer constitute wages only to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee.

(d) *Premiums on life insurance*.—Generally, premiums paid by an employer on a policy of life insurance covering the life of an employee constitute wages if the employer is not a beneficiary under the policy. However, premiums paid by an employer on policies of group life insurance covering the lives of his employees are not wages, if the employee has no option to take the amount of the premiums instead of accepting the insurance and has no equity in the policy (such as the right of assignment or the right to the surrender value on termination of his employment).

(e) *Deductions by an employer from remuneration of an employee*.—Amounts deducted from the remuneration of an employee by an employer constitute wages paid to the employee at the time of such deduction. It is immaterial that the Act, or any Act of Congress or the law of any State, requires or permits such deduction and the payment of the amount thereof to the United States, a State, or any political subdivision thereof (see section 1101(c)).

(f) *Payments by employers into employees' funds*.—Payments made by an employer into a stock bonus, pension, or profit-sharing fund constitute wages if such payments inure to the exclusive benefit of the employee and may be withdrawn by the employee at any time, or upon resignation or dismissal, or if the contract of employment requires such payment as part of the compensation. Whether or not under other circumstances such payments constitute wages depends upon the particular facts of each case.

ART. 210. Adjustments of tax.—(a) If the amount of wages payable with respect to employment during the calendar year is computed and reported by the taxpayer in his return for such year, at an amount greater than the amount which is subsequently determined to have been payable, the overpayment of tax shall be refunded or credited. (See article 503 for general provisions applicable with respect to claims for refund or credit.)

(b) If the amount of wages payable with respect to employment during the calendar year is computed and reported by the taxpayer in his return for such year, at an amount less than the amount which is subsequently determined to have been actually payable, the taxpayer shall file with the collector a statement under oath of the amount of the difference, and the tax shall be paid with respect to such difference.

SECTION 902 OF THE ACT

The taxpayer may credit against the tax imposed by section 901 the amount of contributions, with respect to employment during the taxable year, paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a State law. The total credit allowed to a taxpayer under this section for all contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903.

SECTION 907(e) OF THE ACT

The term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation.

SECTION 907(f) OF THE ACT

The term "contributions" means payments required by a State law to be made by an employer into an unemployment fund, to the extent that such payments are made by him without any part thereof being deducted or deductible from the wages of individuals in his employ.

ART. 211. Credit of contributions against tax.—(a) Subject to the limitations hereinafter prescribed in paragraph (b), the taxpayer may credit against the tax the total amount of his contributions under all State laws which have been found by the Social Security Board to contain the provisions specified in section 903(a) of the Act; provided that no credit may be taken for a contribution under a State law if such State has not been duly certified for the calendar year to the Secretary by the Social Security Board.

(b) The allowance of contributions as credit against the tax is subject to the following limitations:

(1) The total credit allowed to any taxpayer for such contributions shall not in any case exceed 90 per cent of the tax against which such credit is applied.

Example (a): On January 15, 1937, M Company, engaged in the manufacture of typewriters, actually pays contributions, with respect to employment in 1936, totaling \$6,200 into the unemployment compensation fund of State A, and contributions totaling \$3,000 into the

unemployment compensation fund of State B. The M Company files its return on January 31, 1937, which discloses a total tax of \$10,000. Of the total contributions of \$9,200, the M Company may credit only the amount of \$9,000 against the tax of \$10,000 disclosed by the return. The result is that a tax of \$1,000 is due and payable by M Company.

Example (b): If in example (a), above, M Company pays total contributions of only \$7,500 into the unemployment compensation funds of State A and State B, the total tax due and payable for the year 1936 is \$2,500 (\$10,000 minus \$7,500).

(2) The contributions must have been actually paid into the State unemployment fund before the date on which the return for the calendar year is required to be filed. (This date is January 31 next following the close of the calendar year unless the time for filing the return is extended. See articles 303 to 305.)

Example: The return of employer A for the calendar year 1936 is filed on January 31, 1937, and proper credit taken therein for contributions actually paid into a State unemployment fund prior to that date. Thereafter, in June, 1937, additional contributions are paid by A to a State fund with respect to employment during the calendar year 1936. No part of such additional contributions is allowable as credit against the tax for the calendar year 1936, or for any other calendar year.

(3) The contributions must have been paid with respect to employment as defined in section 907(c), that is, with respect to services performed by an employee within the United States and not excepted by the Act. (See articles 206 to 206(7), inclusive.)

Example: Contributions are paid by employer A into a State unemployment fund with respect to domestic services in a private home and also with respect to other services not excepted by section 907(c). Such part of the contributions as was paid with respect to the domestic services in a private home (a class of service excepted by section 907(c) of the Act) is not an allowable credit against the tax.

(4) The contributions must have been paid with respect to services performed during the calendar year covered by the return.

Example: During 1936, contributions are paid by employer A into a State unemployment fund with respect to services performed during the calendar year 1936, and also with respect to services performed during 1935. Only contributions paid with respect to services performed in 1936 are allowable as credit against the tax for the calendar year 1936.

(c) If, subsequent to the filing of the return, a refund is made by a State to the taxpayer of any part of his contributions credited

against the tax, the taxpayer is required to advise the Commissioner under oath of the date and amount of such refund and the reason therefor, and to pay the tax, if any, due as a result of such refund, together with interest from the date when the tax was due.

ART. 212. Proof of credit.—Credit against the tax for contributions paid into State unemployment funds shall not be allowed unless the taxpayer claiming such credit shall have submitted to the Commissioner:

(1) A certificate of the proper officer of each State (the laws of which required the contributions to be paid) showing (a) the total amount of required contributions (exclusive of penalties and interest) actually paid under each law of the State which has been found by the Social Security Board to contain the provisions specified in section 903(a) of the Act; (b) the amount of penalties and interest, if any; (c) the amount of contributions paid with respect to each class of services excepted by section 907(c); (d) the calendar year of the employment with respect to which contributions were paid; (e) the date upon which each such contribution was paid; (f) whether a claim for refund of such contributions or any part thereof is pending; and (g) whether a refund of such contributions or any part thereof has been authorized or paid. If any refund has been authorized or paid, such certificate must show the date, the amount thereof, and the grounds therefor.

(2) An affidavit by the taxpayer that no part of any payment made by him into a State unemployment fund, which is claimed as a credit against the tax, was deducted or is to be deducted from the wages of individuals in his employ.

The Commissioner may require the submission of such additional proof as he may deem necessary to establish the right to the credit provided for under section 902. (See article 211.)

CHAPTER III

RETURNS AND RECORDS

SECTION 905(b) OF THE ACT

Not later than January 31, next following the close of the taxable year, each employer shall make a return of the tax under this title for such taxable year. Each such return shall be made under oath, shall be filed with the collector of internal revenue for the district in which is located the principal place of business of the employer, or, if he has no principal place of business in the United States, then with the collector at Baltimore, Maryland, and shall contain such information and be made in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. * * * The Commissioner may extend the time for filing the return of the tax imposed by this title, under such rules and regulations as he may prescribe with the approval of the Secretary of the Treasury, but no such extension shall be for more than sixty days.

* * * All provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926, shall, insofar as not inconsistent with this title, be applicable in respect of the tax imposed by this title. * * *

[The applicable provisions of law will be considered hereinafter under appropriate subjects.]

SECTION 1102 OF THE REVENUE ACT OF 1926, MADE APPLICABLE BY SECTION 905(b) OF THE ACT

(a) Every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as the Commissioner deems sufficient to show whether or not such person is liable to tax.

(c) The Commissioner, with the approval of the Secretary, may by regulation prescribe that any return required by any internal revenue law (except returns required under income or estate tax laws) to be under oath may, if the amount of the tax covered thereby is not in excess of \$10, be signed or acknowledged before two witnesses instead of under oath.

(d) Any oath or affirmation required by the provisions of this Act or regulations made under authority thereof may be administered by any officer authorized to administer oaths for general purposes by the law of the United States or of any State, Territory, or possession of the United States, wherein such oath or affirmation is administered, or by any consular officer of the United States.

**SECTION 3165 OF THE UNITED STATES REVISED STATUTES, REENACTED
BY SECTION 1115 OF THE REVENUE ACT OF 1926**

Every collector, deputy collector, internal-revenue agent, and internal-revenue officer assigned to duty under an internal-revenue agent, is authorized to administer oaths and to take evidence touching any part of the administration of the internal-revenue laws with which he is charged, or where such oaths and evidence are authorized by law or regulation authorized by law to be taken.

**SECTION 1104 OF THE REVENUE ACT OF 1926, AS AMENDED BY SECTION
618 OF THE REVENUE ACT OF 1928**

The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

**SECTION 3176 OF THE UNITED STATES REVISED STATUTES, AS AMENDED
BY SECTION 1103 OF THE REVENUE ACT OF 1926**

If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner of Internal Revenue may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be prima facie good and sufficient for all legal purposes. * * *

ART. 300. Returns.—Every employer (see article 204) shall make a return under oath on Form 940 for each calendar year according to the instructions thereon and the regulations applicable thereto. The first year for which returns are required is the calendar year 1936. Copies of these prescribed forms may be obtained from collectors of internal revenue.

Each corporation subject to the tax shall render a separate return.

ART. 301. Verification of returns.—Except as provided below, returns must be verified under oath or affirmation, which may be administered by any officer duly authorized to administer oaths for general purposes by the law of the United States or of any State or Territory, wherein such oath is administered, or by a consular officer of the United States. Returns executed abroad may be attested free of

charge before United States consular officers. If a foreign notary or other official having no seal shall act as attesting officer, the authority of such attesting officer should be certified to by some judicial official or other proper officer having knowledge of the appointment and official character of the attesting officer. If the amount of the tax is \$10 or less, the return may be signed or acknowledged before two witnesses instead of under oath. Returns of corporate employers shall be sworn to by the president, vice president, or other principal officer, and by the treasurer, assistant treasurer, or chief accounting officer of the corporation. The return of a partnership or other unincorporated organization shall be sworn to by a responsible and duly authorized member having knowledge of its affairs and, if the partnership or other unincorporated organization has a manager or chief executive officer, by such manager or chief executive officer.

ART. 302. Use of prescribed forms.—Copies of the prescribed return form may be obtained by taxpayers from collectors. A taxpayer will not be excused from making a return because of the fact that no return form has been furnished to him. Taxpayers should make application for the form to the collector in ample time to have their returns prepared, verified, and filed with the collector on or before the due date. Each taxpayer should carefully prepare his return so as fully and clearly to set forth the data therein called for. Imperfect or incorrect returns will not be accepted as meeting the requirements of the Act. In lack of a prescribed form, a statement made by a taxpayer disclosing the amount of wages payable by him with respect to employment during the calendar year may be accepted as a tentative return, and if filed within the prescribed time the statement so made will relieve the taxpayer from liability to penalties, provided that without unnecessary delay such tentative return is supplemented by a return made on the proper form. (See article 304, relating to due date of return.)

ART. 303. Time and place for filing returns.—Returns are required to be made on the calendar year basis on or before January 31 next following the close of the calendar year, and must be filed with the collector of internal revenue for the district in which is located the principal place of business of the employer, or if the employer has no principal place of business in the United States, the return must be filed with the collector of internal revenue at Baltimore, Md.

ART. 304. Extensions of time for filing returns.—It is important that the taxpayer render on or before January 31, next following the close of the taxable year, a return as nearly complete as it is possible for him to prepare. However, the Commissioner is authorized to grant an extension of time for not more than 60 days for filing returns, under such rules and regulations as he may prescribe with the ap-

proval of the Secretary. Accordingly, authority for granting extensions of time for filing returns is hereby delegated to the several collectors of internal revenue. Application for extensions of time for filing returns should be addressed to the collector of internal revenue for the district in which the taxpayer files his returns and must contain a full recital of the causes for the delay. For extensions of time for payment of tax, see article 401.

ART. 305. Due date of return.—The due date is the latest date on which a return is required to be filed in accordance with the provisions of the Act or the last day of the period covered by an extension of time granted by the Commissioner or a collector. When the due date falls on a Sunday or a legal holiday, the due date for filing returns will be the day following such Sunday or legal holiday. If placed in the mails, the return should be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the date on which the return is required to be filed. If a return is made and placed in the mails in due course, properly addressed and postage paid, in ample time to reach the office of the collector on or before the due date, no penalty will attach should the return not actually be received by such officer until subsequent to that date. As to additions to the tax in the case of failure to file a return within the prescribed time, see article 502. If an employer ceases business, his last return shall be marked "Final return."

SECTION 905(c) OF THE ACT

Returns filed under this title shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.

ART. 306. Inspection of returns.—Pursuant to the above provision, the inspection of returns made under Title IX of the Act is governed by the provisions of sections 257 and 1203(d) of the Revenue Act of 1926. (See Appendix B, paragraphs 20 and 21.)

The returns upon which the tax has been determined by the Commissioner, although public records, are open to inspection only to the extent authorized by the President (except as otherwise expressly provided) under rules and regulations promulgated by the Secretary of the Treasury and approved by the President.

SECTION 1102 OF THE REVENUE ACT OF 1926, MADE APPLICABLE BY SECTION 905(b) OF THE ACT

(a) Every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as the Commissioner deems sufficient to show whether or not such person is liable to tax.

SECTION 1114(a) OF THE REVENUE ACT OF 1926, MADE APPLICABLE BY SECTION 905(b) OF THE ACT

(a) Any person required under this Act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

ART. 307. Records.—(a) Every person subject to tax under the Act shall, during the calendar year 1936 or any calendar year thereafter, for each such calendar year, keep such permanent records as are necessary to establish:

(1) The total amount of remuneration payable to his employees in cash or in a medium other than cash, showing separately, (a) total remuneration payable with respect to services excepted by section 907(c), (b) total remuneration payable with respect to services performed outside of the United States, (c) total remuneration payable with respect to all other services.

(2) The amount of contributions paid by him into any State unemployment fund, with respect to services during the calendar year not excepted by section 907(c), showing separately (a) payments made and not deducted (or to be deducted) from the remuneration of employees, (b) payments made and deducted (or to be deducted) from the remuneration of employees; and also the amount of contributions paid by him into any State unemployment fund with respect to services excepted by section 907(c).

(3) The information required to be shown on the prescribed return and the extent to which such person is liable for the tax.

(b) No particular method of accounting or form of record is prescribed. Each person may adopt such records and such method of accounting as may best meet the requirements of his own business, provided that they clearly and accurately show the information required above, and enable him to make a proper return on the prescribed form.

(c) Records are not required to show the number of individuals employed on any day, but must show the total amount of remunera-

tion actually paid during each calendar month and the number of individuals employed during each calendar month or during each such lesser period as the employer may elect.

(*d*) Any person who employs individuals during any calendar year but who considers that he is not an employer subject to the tax (see articles 203 and 204), should be prepared to establish by proper records (including, where necessary, records of the number of persons employed each day) that he is not an employer subject to the tax.

(*e*) All records required by these regulations shall be kept safe and readily accessible at the place of business of the person required to keep such records. Such records shall at all times be open for inspection by internal revenue officers, and shall be preserved for a period of at least four years from the due date of the tax for the calendar year to which they relate.

ART. 308. Termination of business.—Any employer who contemplates either discontinuing business by retirement therefrom or a merger, consolidation, or reorganization involving the transfer of assets, shall immediately give notice in writing of that fact. If an individual subject to the tax dies, notice of his death shall be given in writing by the executor or administrator of his estate as soon as practicable thereafter. In the case of bankruptcy or receivership proceedings, or a proceeding for the relief of a debtor who is an employer, the trustee in bankruptcy, receiver, or person designated by order of the court as in control of the assets of the debtor, shall give notice in writing of the adjudication of bankruptcy, the appointment of the receiver, or the filing of the debtor's petition or answer in a proceeding for the relief of debtors under sections 74, 75, 77, and 77B of the National Bankruptcy Act, as amended, and of the approval of the debtor's petition or answer under section 77B of that Act. The notice required under this article shall be addressed to the Secretary of the Treasury, Attention of Commissioner of Internal Revenue, Washington, D. C.

CHAPTER IV

PAYMENT OF THE TAX

SECTION 905(a) OF THE ACT

The tax imposed by this title shall be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury and shall be paid into the Treasury of the United States as internal-revenue collections. * * *

SECTION 600 OF THE REVENUE ACT OF 1926, MADE APPLICABLE BY SECTION 905(b) OF THE ACT

(b) The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. * * *

SECTION 905(b) OF THE ACT

(b) Not later than January 31, next following the close of the taxable year, each employer shall make a return of the tax under this title for such taxable year. * * *

SECTION 905(d) OF THE ACT

The taxpayer may elect to pay the tax in four equal installments instead of in a single payment, in which case the first installment shall be paid not later than the last day prescribed for the filing of returns, the second installment shall be paid on or before the last day of the third month, the third installment on or before the last day of the sixth month, and the fourth installment on or before the last day of the ninth month, after such last day. If the tax or any installment thereof is not paid on or before the last day of the period fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector.

SECTION 905(e) OF THE ACT

At the request of the taxpayer the time for payment of the tax or any installment thereof may be extended under regulations prescribed by the Commissioner with the approval of the Secretary of the Treasury, for a period not to exceed six months from the last day of the period prescribed for the payment of the tax or any installment thereof. The amount of the tax in respect of which any extension is granted shall be paid (with interest at the rate of one-half of 1 per centum per month) on or before the date of the expiration of the period of the extension.

SECTION 905(f) OF THE ACT

In the payment of any tax under this title a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

ART. 400. Payment of tax.—The tax is due and payable to the collector of internal revenue referred to in article 303 without assessment by the Commissioner or notice or demand from the said collector on the date fixed by law for filing the return (the 31st day of January following the close of each calendar year beginning after December 31, 1935) for which the tax is due. The tax may, at the option of the taxpayer, be paid in four equal installments instead of in a single payment, in which case the first installment is to be paid on or before January 31, the second installment on or before April 30, the third installment on or before July 31, and the fourth installment on or before October 31. If the taxpayer elects to pay the tax in four installments, each installment must be equal in amount; but any installment may be paid, at the election of the taxpayer, prior to the date prescribed for its payment. If the tax or any installment thereof is not paid in full on or before the date fixed for its payment either by the Act or by the Commissioner in accordance with the terms of an extension of time granted for the payment of the tax or installment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector. (See article 502, relating to interest and penalties.)

ART. 401. Extension of time for payment of the tax or installment thereof.—If it is shown to the satisfaction of the Commissioner that the payment of the tax or any part or installment thereof upon the date or dates prescribed for the payment thereof will result in undue hardship to the taxpayer, the Commissioner, at the request of the taxpayer, may grant an extension of time for the payment for a period not to exceed six months from the date prescribed for the payment of such amount or installment. The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the taxpayer. It must appear that substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the taxpayer from making payment of the amount at the due date. If a market exists, the sale of property at the current market price is not ordinarily considered as resulting in an undue hardship.

An application for an extension of time for the payment of such tax, part or installment, should be made under oath on the prescribed form, and must be accompanied or supported by evidence showing the undue hardship that would result to the taxpayer if the extension were refused. A sworn statement of assets and liabilities of the taxpayer is required and should accompany the application. An itemized statement showing all receipts and disbursements for each of the three months preceding the due date of the tax or installment shall also be submitted. The application with the evidence must be filed with the collector, who will at once transmit it to the Commis-

sioner, with his recommendations as to the extension. When it is received by the Commissioner it will be examined immediately and, if possible, within 30 days will be rejected, approved, or tentatively approved, subject to certain conditions of which the taxpayer will be immediately notified. The Commissioner will not consider an application for an extension of time for the payment of a tax or installment unless such application is made in writing, and is made to the collector on or before the due date of the tax or installment thereof for which the extension is desired, or on or before the date or dates prescribed for payment in any prior extension granted.

As a condition to the granting of such an extension, the Commissioner will usually require the taxpayer to furnish a bond on the prescribed form in an amount not exceeding double the amount of the tax or installment or to furnish other security satisfactory to the Commissioner for the payment of the tax, or installment thereof, on the date prescribed for payment in the extension, so that the risk of loss to the Government will not be greater at the end of the extension period than it was at the beginning of the period. If a bond is required it must be filed with the collector within 10 days after notification by the Commissioner that such bond is required. It shall be conditioned upon the payment of the tax, or installment, the interest, and additional amounts assessed in connection therewith in accordance with the terms of the extension granted, and shall be executed by a surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds, and shall be subject to the approval of the Commissioner. In lieu of such a bond, the taxpayer may file a bond secured by deposit of bonds or notes of the United States equal in their total par value to an amount not exceeding double the amount of the tax, or installment thereof. (See section 1126 of the Revenue Act of 1926, as amended, Appendix B, paragraph 3.) A request by the taxpayer for an extension of time for the payment of one installment does not operate to procure an extension of time for payment of subsequent installments. Nor does an extension of time for filing a return operate to extend the time for the payment of the tax or any part thereof, unless so specified in the extension. If an extension of time for payment of the tax or any installment is granted, the amount, time for payment of which is so extended, shall be paid on or before the expiration of the period of the extension, together with interest at the rate of one-half of 1 per cent per month on such amount from the date when the payment should have been made if no extension had been granted until the expiration of the period of the extension. (See section 905(e).)

ART. 402. Fractional part of a cent.—In the payment of the tax or any installment thereof a fractional part of a cent shall be disregarded

unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. Fractional parts of a cent should not be disregarded in the computation of the tax or any installment thereof.

SECTION 1118(a) OF THE REVENUE ACT OF 1926

Collectors may receive, at par with an adjustment for accrued interest, notes or certificates of indebtedness issued by the United States and uncertified checks in payment of income, war-profits, and excess-profits taxes and any other taxes payable other than by stamp, during such time and under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions to the same extent as if such check had not been tendered.

SECTION 1 OF THE ACT OF MARCH 2, 1911 (36 STAT., 965), AS AMENDED BY THE ACT OF MARCH 3, 1913 (37 STAT., 733)

It shall be lawful for collectors of internal revenue to receive for internal taxes and all public dues certified checks drawn on National and State banks, and trust companies during such time and under such regulations as the Secretary of the Treasury may prescribe. No person, however, who may be indebted to the United States on account of internal taxes who shall have tendered a certified check or checks as provisional payment for such duties or taxes, in accordance with the terms of this section, shall be released from the obligation to make ultimate payment thereof until such certified check so received has been duly paid; and if any such check so received is not duly paid by the bank on which it is drawn and so certifying, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for the amount of such check upon all the assets of such bank; and such amount shall be paid out of its assets in preference to any or all other claims whatsoever against said bank, except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank.

ART. 403. Method of payment.—(a) *Payment of tax by uncertified checks.*—Collectors may receive uncertified checks in payment of the tax if such checks are collectible at par—that is, for their full amount, without deduction for exchange or other charges. The collector will stamp on the face of each check before deposit the words “This check is in payment of an obligation to the United States and must be paid at par. No protest,” with his name and title.

(b) *Procedure with respect to dishonored checks.*—If the bank upon which any such check is drawn should, for any reason, refuse to pay it at par, the check should be returned through the depository bank and treated as a dishonored check. All expenses incident to the attempt to collect such check and the return of it through the depository bank must be paid by the drawer of the check, since no

deduction can be made from amounts received in payment of taxes. If any taxpayer whose check has been returned uncollected by the depositary bank should fail at once to make the check good, or to pay the amount thereof, the collector should proceed to collect the tax as though no check had been given. A taxpayer who tenders a check, whether certified or not, in payment of taxes is not released from his obligation until the check has been paid.

CHAPTER V

MISCELLANEOUS PROVISIONS

JEOPARDY ASSESSMENTS

SECTION 1105 OF THE REVENUE ACT OF 1932, AS AMENDED BY SECTION 510 OF THE REVENUE ACT OF 1934

(a) If the Commissioner believes that the collection of any tax (other than income tax, estate tax, and gift tax) under any provision of the internal-revenue laws will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest and penalties the assessment of which is provided for by law). Such tax, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the collector for the payment thereof. Upon failure or refusal to pay such tax, penalty, and interest, collection thereof by distraint shall be lawful without regard to the period prescribed in section 3187 of the Revised Statutes, as amended.

(b) The collection of the whole or any part of the amount of such assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of the amount collection of which is stayed, at the time at which, but for this section, such amount would be due.

ART. 500. Jeopardy assessment—Immediate collection of the tax.—(a) Whenever, in the opinion of the collector, the collection of the tax will be jeopardized by delay, he should report the case promptly to the Commissioner by telegram or letter. The communication should recite the full name and address of the person involved, the amount of taxes due, the period involved, and any other pertinent facts.

(b) If a jeopardy assessment is made, the taxpayer may stay the collection of the tax by filing with the collector a bond in such amount, not exceeding double the amount of the tax, and with such sureties, as the collector deems necessary, conditioned upon the payment of the tax at the usual time. In lieu of surety or sureties the taxpayer may deposit with the collector bonds or notes of the United States having a par value not less than the amount of the bond required to be furnished, together with an agreement authorizing the collector to collect and sell such bonds or notes so deposited in case of default. (See paragraph 3, Appendix B.)

CLOSING AGREEMENTS

SECTION 606 (a) AND (b) OF THE REVENUE ACT OF 1928

(a) *Authorization*.—The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commissioner) is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal-revenue tax for any taxable period ending prior to the date of the agreement.

(b) *Finality of agreements*.—If such agreement is approved by the Secretary, or the Undersecretary, within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

ART. 501. Closing agreements.—Agreements for the final determination of taxes may be entered into under the provisions of section 606 (a) and (b) of the Revenue Act of 1928. Such closing or final agreements may relate to any taxable period ending prior to the date of the agreement. Such an agreement may be executed even though under such agreement the taxpayer is not liable for any tax for the period covered by the agreement. The matter agreed upon may relate to the total tax liability of the taxpayer or it may relate to one or more separate items affecting the tax liability of the taxpayer. Accordingly, there may be a series of agreements relating to the tax liability for a single taxable period.

INTEREST AND PENALTIES

SECTION 905(a) OF THE ACT

* * * If the tax is not paid when due, there shall be added as part of the tax interest at the rate of one-half of 1 per centum per month from the date the tax became due until paid. * * *

SECTION 404 OF THE REVENUE ACT OF 1935

Notwithstanding any provision of law to the contrary, interest accruing during any period of time after the date of the enactment of this Act upon any internal-revenue tax (including amounts assessed or collected as a part thereof) or customs duty, not paid when due, shall be at the rate of 6 per centum per annum.

SECTION 406 OF THE REVENUE ACT OF 1935

In the case of a failure to make and file an internal-revenue tax return required by law, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, if the last date so prescribed for filing the return is after the date of the enactment of this Act, if a 25 per centum addition to the tax is prescribed by existing law, then there shall be added to the tax, in lieu of such 25 per centum: 5 per centum if the failure is for not more than 30 days, with an additional 5 per centum for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per centum in the aggregate.

SECTION 3176, AS AMENDED, UNITED STATES REVISED STATUTES AS AMENDED BY SECTION 1103 OF THE REVENUE ACT OF 1926

* * * In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

SECTION 3184 OF THE UNITED STATES REVISED STATUTES

SEC. 3184. Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof. If such person does not pay the taxes within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of five per centum additional upon the amount of taxes, and interest at the rate of one per centum a month.

ART. 502. Interest and penalties.—A failure to file a return when due causes to accrue, under the provisions of section 406 of the Revenue Act of 1935, a penalty of from 5 per cent to 25 per cent of the amount of the tax, depending upon the period of delinquency.

Failure to pay the tax when due and payable causes to accrue, under the provisions of section 404 of the Revenue Act of 1935, interest at the rate of one-half of 1 per cent a month from the time when the tax became due until assessed, or until paid prior to assessment.

If assessment is made of the tax, penalty, or interest, and payment is not made within 10 days after the issuance of the form for first notice and demand, based on assessment approved by the Commissioner, there will accrue under section 3184, Revised Statutes, a 5 per cent penalty and interest at the rate of one-half of 1 per cent per month (see section 404 of the Revenue Act of 1935) computed on the entire assessment (including penalty and interest, if any) from 10 days after issuance of said form until date of payment. In cases where assessment is settled by partial payments, interest should be computed from the expiration of the first 10-day notice through the date of the first payment and from the next succeeding day to the date of the next payment, until the assessment is paid in full.

If a claim for abatement is filed with the collector within 10 days after the date of the issuance of the first notice and demand, the 5 per cent penalty does not attach. If the assessment is not paid within 10 days after receipt of notice of rejection of the claim, the 5 per cent penalty applies. The filing of the claim does not stay the running of interest, which continues to run for the full period that intervenes between the date of expiration of the first notice and demand and the date of payment.

If a false or fraudulent return be willfully made, the penalty under section 3176 of the Revised Statutes is 50 per cent of the total tax.

Under section 1114 of the Revenue Act of 1926 (see paragraph 17, Appendix B) any person who willfully fails to pay or collect any tax due, file return, or keep records, or who attempts in any manner to evade or defeat the tax, is subject to a fine of \$10,000 or imprisonment, or both, with costs of prosecution, and is also liable to a penalty equal to the amount of the tax not collected or paid. These penalties apply to an officer or employee who, as such officer or employee, is under a duty to perform the act in respect of which the violation occurs, as well as to a person who fails or refuses to perform any of the duties imposed by the Act, i. e., pay the tax, make return, keep records, supply information, etc.

CREDITS AND REFUNDS

SECTION 3220 OF UNITED STATES REVISED STATUTES, AS AMENDED BY SECTION 1111 OF THE REVENUE ACT OF 1926, AND SECTION 619(b) OF THE REVENUE ACT OF 1928

Except as otherwise provided * * * the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; * * *

SECTION 3228(a) OF UNITED STATES REVISED STATUTES, AS AMENDED BY SECTION 1112 OF THE REVENUE ACT OF 1926, SECTION 619(c) OF THE REVENUE ACT OF 1928, AND SECTION 1106(a) OF THE REVENUE ACT OF 1932

All claims for the refunding or crediting of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, * * * be presented to the Commissioner of Internal Revenue within four years next after the payment of such tax, penalty, or sum. The amount of the refund * * * shall not exceed the portion of the tax, penalty, or sum paid during the four years immediately preceding the filing of the claim, or if no claim was filed, then during the four years immediately preceding the allowance of the refund.

ART. 503. Refund and credit of taxes erroneously collected.—(a) A tax (including interest, penalties, and additions to tax) erroneously, illegally, or otherwise wrongfully collected, may be credited or refunded to the person who paid the tax. A claim for such credit or refund shall be made on Form 843 in accordance with the instructions printed on such form and in accordance with these regulations. Copies of the prescribed form may be obtained from any collector. A separate claim on such form shall be made for each taxable year or period. All grounds in detail and all facts alleged in support of the claim must be clearly set forth under oath.

(b) The claim must be accompanied by a certificate of the proper State officer showing (1) whether a claim for refund or credit with respect to any contributions paid by the taxpayer into a State unemployment fund for the taxable year is pending, (2) whether a refund or credit with respect to any such contributions has been authorized, and (3) if such a refund or credit has been made, the amount and date thereof and grounds therefor.

(c) No refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a claim therefor except upon one or more of the grounds set forth in a claim filed prior to the expiration of such period.

(d) A claim which does not comply with the requirements of this article will not be considered for any purpose as a claim for refund or credit. With respect to limitations upon the refunding or crediting of taxes, see section 3228 of the Revised Statutes, as amended.

(e) If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter a refund claim is filed

by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim showing that the return was filed by the fiduciary and that the latter is still acting. In such cases, if a refund or interest is to be paid, letters testamentary, letters of administration, or other evidence may be required, but should be submitted only upon the receipt of a specific request therefor. If a claim is filed by a fiduciary other than the one by whom the return was filed, the necessary documentary evidence should accompany the claim. The affidavit may be made by the agent of the person assessed, but in such case a power of attorney must accompany the claim.

(f) Checks in payment of claims allowed will be drawn in the names of the persons entitled to the money and may be sent to such persons in care of an attorney or agent who has filed a power of attorney specifically authorizing him to receive such checks. The Commissioner may, however, send any such check direct to the claimant. In this connection, see section 3477 of the Revised Statutes, which provides:

SEC. 3477. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same.

The Commissioner has no authority to refund on equitable grounds penalties or other amounts legally collected.

(g) Any refund or credit made by a State to a taxpayer with respect to any contributions paid by him into a State unemployment fund for the taxable year shall be considered in determining the amount of the refund, if any, due with respect to the tax paid for such taxable year. If, subsequent to the making of a refund with respect to the tax, a refund or credit is made by a State with respect to the contributions paid into the State unemployment fund, the taxpayer is required to advise the collector under oath of the date and amount of the refund and the reason therefor, and to pay the tax, if any, due as a result of such refund, together with interest.

(For other applicable provisions of law relating to refunds, see Appendix B, paragraphs 22 to 27, inclusive.)

ART. 504. Claim for payment of judgment obtained against collector.—

(a) A claim for the amount of a judgment against a collector of internal revenue for the recovery of taxes, penalties, or other sums should be made under oath, on Form 843, and filed directly with the Commissioner of Internal Revenue, Washington, D. C. Two certified copies of the final judgment, a certificate of probable cause, and an itemized bill of the court costs paid, receipted by the clerk or other proper officer of the court should be attached to the claim. With respect to the certificate of probable cause, section 989 of the Revised Statutes provides:

SEC. 989. When a recovery is had in any suit or proceeding against a collector or other officer of the revenue for any act done by him, or for the recovery of any money exacted by or paid to him and by him paid into the Treasury, in the performance of his official duty, and the court certifies that there was probable cause for the act done by the collector or other officer, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the Government, no execution shall issue against such collector or other officer, but the amount so recovered shall, upon final judgment, be provided for and paid out of the proper appropriation from the Treasury.

If the judgment was affirmed on appeal, two certified copies of the mandate of the appellate court should also be attached to the claim. A judgment will not be paid until the period for appeal has expired unless a stipulation, signed by both parties to the suit, waiving the right to appeal, has been filed with the clerk of the court, and two certified copies of such waiver are furnished to the Commissioner.

(b) If the judgment debtor shall have already paid the amount recovered against him, the claim should be made in his name, accompanied by two certified copies of the final judgment, and an itemized bill of the court costs paid. A certificate of the clerk of the court in which the judgment was recovered (or other satisfactory evidence), showing that the judgment has been satisfied and specifying the exact sum paid in its satisfaction, should accompany the claim.

ART. 505. Claim for payment of judgment obtained in United States district court against the United States.—A claim for the payment of a judgment rendered by a United States district court against the United States representing taxes, penalties, or other sums should be made under oath, on Form 843, in duplicate, and filed directly with the Commissioner of Internal Revenue, Washington, D. C. Two certified copies of the final judgment and an itemized bill of the court costs paid, receipted by the clerk or other proper officer of the court should be attached to the claim. If the judgment was affirmed

on appeal, two certified copies of the mandate of the appellate court should also be attached to the claim. A judgment will not be paid until the period for appeal has expired unless a stipulation, signed by both parties to the suit, waiving the right to appeal, has been filed with the clerk of the court, and two certified copies of such waiver are furnished to the Commissioner.

ART. 506. Claim for payment of judgment obtained in the Court of Claims against the United States.—A claim for the payment of a judgment rendered by the United States Court of Claims against the United States, representing taxes, penalties, or other sums, should be made under oath, on Form 843, in duplicate, and filed directly with the Commissioner of Internal Revenue, Washington, D. C., accompanied by a certificate of judgment issued by the clerk of the court and two copies of the printed opinion of the court, if an opinion was rendered. A judgment will not be paid until the period for appeal has expired unless a stipulation, signed by both parties to the suit, waiving the right to appeal, has been filed with the clerk of the court, and two certified copies of such waiver are furnished to the Commissioner.

ART. 507. Examination of returns and determination of tax by the Commissioner.—As soon as practicable after the returns under Title IX are filed, they will be examined and the correct amount of tax determined under such procedure as may be prescribed from time to time by the Commissioner.

AUTHORITY FOR REGULATIONS

SECTION 908 OF THE ACT

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make and publish rules and regulations for the enforcement of this title, except sections 903, 904, and 910.

In pursuance of the Act and other provisions of the internal revenue laws, the foregoing regulations are hereby prescribed.

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved February 17, 1936.

H. MORGENTHAU, JR.,
Secretary of the Treasury.

APPENDIX A

TITLE VII OF THE SOCIAL SECURITY ACT—SOCIAL SECURITY BOARD

ESTABLISHMENT

SECTION 701. There is hereby established a Social Security Board (in this Act referred to as the "Board") to be composed of three members to be appointed by the President, by and with the advice and consent of the Senate. During his term of membership on the Board, no member shall engage in any other business, vocation, or employment. Not more than two of the members of the Board shall be members of the same political party. Each member shall receive a salary at the rate of \$10,000 a year and shall hold office for a term of six years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term; and (2) the terms of office of the members first taking office after the date of the enactment of this Act shall expire, as designated by the President at the time of appointment, one at the end of two years, one at the end of four years, and one at the end of six years, after the date of the enactment of this Act. The President shall designate one of the members as the chairman of the Board.

DUTIES OF SOCIAL SECURITY BOARD

SEC. 702. The Board shall perform the duties imposed upon it by this Act and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance, and as to legislation and matters of administrative policy concerning old-age pensions, unemployment compensation, accident compensation, and related subjects.

EXPENSES OF THE BOARD

SEC. 703. The Board is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures, as may be necessary for carrying out its functions under this Act. Appointments of attorneys and experts may be made without regard to the civil-service laws.

REPORTS

SEC. 704. The Board shall make a full report to Congress, at the beginning of each regular session, of the administration of the functions with which it is charged.

TITLE IX OF THE SOCIAL SECURITY ACT—TAX ON EMPLOYERS OF EIGHT OR MORE

IMPOSITION OF TAX

SECTION 901. On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to

having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year:

- (1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum;
- (2) With respect to employment during the calendar year 1937 the rate shall be 2 per centum;
- (3) With respect to employment after December 31, 1937, the rate shall be 3 per centum.

CREDIT AGAINST TAX

SEC. 902. The taxpayer may credit against the tax imposed by section 901 the amount of contributions, with respect to employment during the taxable year, paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a State law. The total credit allowed to a taxpayer under this section for all contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903.

CERTIFICATION OF STATE LAWS

SEC. 903. (a) The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that—

(1) All compensation is to be paid through public employment offices in the State or such other agencies as the Board may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904;

(4) All money withdrawn from the Unemployment Trust Fund by the State agency shall be used solely in the payment of compensation, exclusive of expenses of administration;

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

The Board shall, upon approving such law, notify the Governor of the State of its approval.

(b) On December 31 in each taxable year the Board shall certify to the Secretary of the Treasury each State whose law it has previously approved,

except that it shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Board finds has changed its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provision.

(c) If, at any time during the taxable year, the Board has reason to believe that a State whose law it has previously approved, may not be certified under subsection (b), it shall promptly so notify the Governor of such State.

UNEMPLOYMENT TRUST FUND

SEC. 904. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund", hereinafter in this title called the "Fund." The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund. Such deposit may be made directly with the Secretary of the Treasury or with any Federal reserve bank or member bank of the Federal Reserve System designated by him for such purpose.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at par, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition.

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency and shall credit quarterly on March 31, June 30, September 30, and December 31, of each year, to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date.

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment.

ADMINISTRATION, REFUNDS, AND PENALTIES

SEC. 905. (a) The tax imposed by this title shall be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury and shall be paid into the Treasury of the United States as internal-revenue collections. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of one-half of 1 per centum per month from the date the tax became due until paid.

(b) Not later than January 31, next following the close of the taxable year, each employer shall make a return of the tax under this title for such taxable year. Each such return shall be made under oath, shall be filed with the collector of internal revenue for the district in which is located the principal place of business of the employer, or, if he has no principal place of business in the United States, then with the collector at Baltimore, Maryland, and shall contain such information and be made in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. All provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926, shall, insofar as not inconsistent with this title, be applicable in respect of the tax imposed by this title. The Commissioner may extend the time for filing the return of the tax imposed by this title, under such rules and regulations as he may prescribe with the approval of the Secretary of the Treasury, but no such extension shall be for more than sixty days.

(c) Returns filed under this title shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.

(d) The taxpayer may elect to pay the tax in four equal installments instead of in a single payment, in which case the first installment shall be paid not later than the last day prescribed for the filing of returns, the second installment shall be paid on or before the last day of the third month, the third installment on or before the last day of the sixth month, and the fourth installment on or before the last day of the ninth month, after such last day. If the tax or any installment thereof is not paid on or before the last day of the period fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector.

(e) At the request of the taxpayer the time for payment of the tax or any installment thereof may be extended under regulations prescribed by the Commissioner with the approval of the Secretary of the Treasury, for a period not to exceed six months from the last day of the period prescribed for the payment of the tax or any installment thereof. The amount of the tax in respect of which any extension is granted shall be paid (with interest at the rate of one-half of 1 per centum per month) on or before the date of the expiration of the period of the extension.

(f) In the payment of any tax under this title a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

INTERSTATE COMMERCE

SEC. 906. No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate commerce, or that the State law does not distinguish between employees engaged in interstate commerce and those engaged in intrastate commerce.

DEFINITIONS

SEC. 907. When used in this title—

(a) The term "employer" does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were in his employ for some portion of the day (whether or not at the same moment of time) was eight or more.

(b) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.

(c) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) The term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(e) The term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation.

(f) The term "contributions" means payments required by a State law to be made by an employer into an unemployment fund, to the extent that such payments are made by him without any part thereof being deducted or deductible from the wages of individuals in his employ.

(g) The term "compensation" means cash benefits payable to individuals with respect to their unemployment.

RULES AND REGULATIONS

SEC. 908. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make and publish rules and regulations for the enforcement of this title, except sections 903, 904, and 910.

ALLOWANCE OF ADDITIONAL CREDIT

SEC. 909. (a) In addition to the credit allowed under section 902, a taxpayer may, subject to the conditions imposed by section 910, credit against the tax imposed by section 901 for any taxable year after the taxable year 1937, an amount, with respect to each State law, equal to the amount, if any, by which the contributions, with respect to employment in such taxable year, actually

paid by the taxpayer under such law before the date of filing his return for such taxable year, is exceeded by whichever of the following is the lesser—

(1) The amount of contributions which he would have been required to pay under such law for such taxable year if he had been subject to the highest rate applicable from time to time throughout such year to any employer under such law; or

(2) Two and seven-tenths per centum of the wages payable by him with respect to employment with respect to which contributions for such year were required under such law.

(b) If the amount of the contributions actually so paid by the taxpayer is less than the amount which he should have paid under the State law, the additional credit under subsection (a) shall be reduced proportionately.

(c) The total credits allowed to a taxpayer under this title shall not exceed 90 per centum of the tax against which such credits are taken.

CONDITIONS OF ADDITIONAL CREDIT ALLOWANCE

SEC. 910. (a) A taxpayer shall be allowed the additional credit under section 909, with respect to his contribution rate under a State law being lower, for any taxable year, than that of another employer subject to such law, only if the Board finds that under such law—

(1) Such lower rate, with respect to contributions to a pooled fund, is permitted on the basis of not less than three years of compensation experience;

(2) Such lower rate, with respect to contributions to a guaranteed employment account, is permitted only when his guaranty of employment was fulfilled in the preceding calendar year, and such guaranteed employment account amounts to not less than $7\frac{1}{2}$ per centum of the total wages payable by him, in accordance with such guaranty, with respect to employment in such State in the preceding calendar year;

(3) Such lower rate, with respect to contributions to a separate reserve account, is permitted only when (A) compensation has been payable from such account throughout the preceding calendar year, and (B) such account amounts to not less than five times the largest amount of compensation paid from such account within any one of the three preceding calendar years, and (C) such account amounts to not less than $7\frac{1}{2}$ per centum of the total wages payable by him (plus the total wages payable by any other employers who may be contributing to such account) with respect to employment in such State in the preceding calendar year.

(b) Such additional credit shall be reduced, if any contributions under such law are made by such taxpayer at a lower rate under conditions not fulfilling the requirements of subsection (a), by the amount bearing the same ratio to such additional credit as the amount of contributions made at such lower rate bears to the total of his contributions paid for such year under such law.

(c) As used in this section—

(1) The term "reserve account" means a separate account in an unemployment fund, with respect to an employer or group of employers, from which compensation is payable only with respect to the unemployment of individuals who were in the employ of such employer, or of one of the employers comprising the group.

(2) The term "pooled fund" means an unemployment fund or any part thereof in which all contributions are mingled and undivided, and from which compensation is payable to all eligible individuals, except that to individuals last employed by employers with respect to whom reserve

accounts are maintained by the State agency, it is payable only when such accounts are exhausted.

(3) The term "guaranteed employment account" means a separate account, in an unemployment fund, of contributions paid by an employer (or group of employers) who

(A) guarantees in advance thirty hours of wages for each of forty calendar weeks (or more, with one weekly hour deducted for each added week guaranteed) in twelve months, to all the individuals in his employ in one or more distinct establishments, except that any such individual's guaranty may commence after a probationary period (included within twelve or less consecutive calendar weeks), and

(B) gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties, from which account compensation shall be payable with respect to the unemployment of any such individual whose guaranty is not fulfilled or renewed and who is otherwise eligible for compensation under the State law.

(4) The term "year of compensation experience", as applied to an employer, means any calendar year throughout which compensation was payable with respect to any individual in his employ who became unemployed and was eligible for compensation.

TITLE XI OF THE SOCIAL SECURITY ACT—GENERAL PROVISIONS

DEFINITIONS

SECTION 1101. (a) When used in this Act—

(1) The term "State" (except when used in section 531) includes Alaska, Hawaii, and the District of Columbia.

(2) The term "United States" when used in a geographical sense means the States, Alaska, Hawaii, and the District of Columbia.

(3) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(4) The term "corporation" includes associations, joint-stock companies, and insurance companies.

(5) The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(6) The term "employee" includes an officer of a corporation.

(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) Whenever under this Act or any Act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of this Act the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

(d) Nothing in this Act shall be construed as authorizing any Federal official, agent, or representative, in carrying out any of the provisions of this Act, to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child.

RULES AND REGULATIONS

SEC. 1102. The Secretary of the Treasury, the Secretary of Labor, and the Social Security Board, respectively, shall make and publish such rules and

regulations, not inconsistent with this Act, as may be necessary to the efficient administration of the functions with which each is charged under this Act.

SEPARABILITY

SEC. 1103. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

RESERVATION OF POWER

SEC. 1104. The right to alter, amend, or repeal any provision of this Act is hereby reserved to the Congress.

SHORT TITLE

SEC. 1105. This Act may be cited as the "Social Security Act."

APPENDIX B

COMPROMISES

CIVIL AND CRIMINAL CASES

PARAGRAPH 1. The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal-revenue laws instead of commencing suit thereon; and, with the advice and consent of the said Secretary and the recommendation of the Attorney General, he may compromise any such case after a suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of the Commissioner the opinion of the Solicitor of Internal Revenue, or of the officer acting as such, with his reasons therefor, with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise. (Section 3229, Revised Statutes.)

CONCEALMENT OF ASSETS

PAR. 2. Any person who, in connection with any compromise under section 3229 of the Revised Statutes, as amended, or offer of such compromise, or in connection with any closing agreement under section 606 of this Act, or offer to enter into any such agreement, willfully (1) conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or (2) receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax, shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned for not more than one year, or both. (Section 616, Revenue Act of 1928.)

DEPOSIT OF UNITED STATES BONDS OR NOTES IN LIEU OF SURETY

PAR. 3. Wherever by the laws of the United States or regulations made pursuant thereto, any person is required to furnish any recognizance, stipulation, bond, guaranty, or undertaking, hereinafter called "penal bond," with surety or sureties, such person may, in lieu of such surety or sureties, deposit as security with the official having authority to approve such penal bond, United States Liberty bonds or other bonds or notes of the United States in a sum equal at their par value to the amount of such penal bond required to be furnished, together with an agreement authorizing such official to collect or sell such bonds or notes so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. The acceptance of such United States bonds or notes in lieu of surety or sureties required by

law shall have the same force and effect as individual or corporate sureties, or certified checks, bank drafts, post-office money orders, or cash, for the penalty or amount of such penal bond. The bonds or notes deposited hereunder and such other United States bonds or notes as may be substituted therefor from time to time as such security, may be deposited with the Treasurer of the United States, a Federal reserve bank, or other depository duly designated for that purpose by the Secretary, which shall issue receipt therefor, describing such bonds or notes so deposited. As soon as security for the performance of such penal bond is no longer necessary, such bonds or notes so deposited shall be returned to the depositor: *Provided*, That in case a person or persons supplying a contractor with labor or material as provided by the Act of Congress, approved February 24, 1905 (33 Stat. 811), entitled "An Act to amend an Act approved August thirteenth, eighteen hundred and ninety-four, entitled 'An Act for the protection of persons furnishing materials and labor for the construction of public works,'" shall file with the obligee, at any time after a default in the performance of any contract subject to said Acts, the application and affidavit therein provided, the obligee shall not deliver to the obligor the deposited bonds or notes nor any surplus proceeds thereof until the expiration of the time limited by said Acts for the institution of suit by such person or persons, and, in case suit shall be instituted within such time, shall hold said bonds or notes or proceeds subject to the order of the court having jurisdiction thereof: *Provided further*, That nothing herein contained shall affect or impair the priority of the claim of the United States against the bonds or notes deposited or any right or remedy granted by said Acts or by this section to the United States for default upon any obligation of said penal bond: *Provided further*, That all laws inconsistent with this section are hereby so modified as to conform to the provisions hereof: *And provided further*, That nothing contained herein shall affect the authority of courts over the security, where such bonds are taken as security in judicial proceedings, or the authority of any administrative officer of the United States to receive United States bonds for security in cases authorized by existing laws. The Secretary may prescribe rules and regulations necessary and proper for carrying this section into effect.

In order to avoid the frequent substitution of securities such rules and regulations may limit the effect of this section, in appropriate classes of cases, to bonds and notes of the United States maturing more than a year after the date of deposit of such bonds as security. The phrase "bonds or notes of the United States" shall be deemed, for the purposes of this section, to mean any public-debt obligations of the United States and any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States. (Section 1126, Revenue Act of 1926, as amended by section 7 of the Act of February 4, 1935 (Public, No. 3).)

EXAMINATION OF BOOKS AND WITNESSES

PAR. 4. The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be in-

cluded in such return, with power to administer oaths to such person or persons. (Section 1104, Revenue Act of 1926, as amended by section 618, Revenue Act of 1928.)

UNNECESSARY EXAMINATIONS

PAR. 5. No taxpayer shall be subjected to unnecessary examinations or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the Commissioner, after investigation, notifies the taxpayer in writing that an additional inspection is necessary. (Section 1105, Revenue Act of 1926.)

TRANSFEREES

PAR. 6. The Commissioner, for the purpose of determining the liability at law or in equity of a transferee of the property of any person with respect to any Federal taxes imposed upon such person, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon such liability, and may require the attendance of the transferor or transferee, or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter, with power to administer oaths to such person or persons. (Section 507, Revenue Act of 1934.)

LIENS FOR TAXES

PAR. 7. (a) If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

(b) Such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) in accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; or

(2) in the office of the clerk of the United States District Court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; or

(3) in the office of the clerk of the Supreme Court of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(c) Subject to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, the collector of internal revenue charged with an assessment in respect of any tax—

(1) May issue a certificate of release of the lien if the collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable;

(2) May issue a certificate of release of the lien if there is furnished to the collector and accepted by him a bond that is conditioned upon the payment of

the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regulations;

(3) May issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon such property.

(4) May issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the collector in part satisfaction of the liability in respect of such tax an amount determined by the Commissioner, which shall not be less than the value, as determined by him, of the interest of the United States in the part to be so discharged. In determining such value the Commissioner shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the United States.

(d) A certificate of release or of partial discharge issued under this section shall be held conclusive that the lien upon the property covered by the certificate is extinguished.

(e) The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation provide for the acceptance of a single bond complying both with the requirements of section 272 (j) of the Revenue Act of 1928 (relating to the extension of time for the payment of a deficiency), or of any similar provisions of any prior law, and the requirements of subsection (c) of this section.

(f) Subsections (c), (d), and (e) of this section shall apply to a lien in respect of any internal-revenue tax, whether or not the lien is imposed by this section. (Section 3186, Revised Statutes, as amended, and further amended by section 613, Revenue Act of 1928, and by section 509, Revenue Act of 1934.)

ENFORCEMENT OF TAX LIENS

PAR. 8. Section 3207 of the Revised Statutes, as amended, is reenacted without change, as follows:

“**SEC. 3207.** (a) In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell real estate to satisfy the same, the Commissioner of Internal Revenue may direct a bill in chancery to be filed, in a district court of the United States, to enforce the lien of the United States for tax upon any real estate, or to subject any real estate owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax. All persons having liens upon or claiming any interest in the real estate sought to be subjected as aforesaid, shall be made parties to such proceedings, and be brought into court as provided in other suits in chancery therein. And the said court shall, at the term next after the parties have been duly notified of the proceedings, unless otherwise ordered by the court, proceed to adjudicate all matters involved therein, and finally determine the merits of all claims to and liens upon the real estate in question, and, in all cases where a claim or interest of the United States therein is established, shall decree a sale of such real estate, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States.

“(b) Any person having a lien upon or any interest in such real estate, notice of which has been duly filed of record in the jurisdiction in which the real

estate is located, prior to the filing of notice of the lien of the United States as provided by section 3186 of the Revised Statutes as amended, or any person purchasing the real estate at a sale to satisfy such prior lien or interest, may make written request to the Commissioner of Internal Revenue to direct the filing of a bill in chancery as provided in subdivision (a), and if the Commissioner fails to direct the filing of such bill within six months after receipt of such written request, such person or purchaser may, after giving notice to the Commissioner, file a petition in the district court of the United States for the district in which the real estate is located, praying leave to file a bill for a final determination of all claims to or liens upon the real estate in question. After a full hearing in open court, the district court may in its discretion enter an order granting leave to file such bill, in which the United States and all persons having liens upon or claiming any interest in the real estate shall be made parties. Service on the United States shall be had in the manner provided by sections 5 and 6 of the Act of March 3, 1887, entitled 'An Act to provide for the bringing of suits against the Government of the United States.' Upon the filing of such bill the district court shall proceed to adjudicate the matters involved therein, in the same manner as in the case of bills filed under subdivision (a) of this section. For the purpose of such adjudication, the assessment of the tax upon which the lien of the United States is based shall be conclusively presumed to be valid, and all costs of the proceedings on the petition and the bill shall be borne by the person filing the bill." (Section 1127, Revenue Act of 1926.)

PRIORITY OF DEBTS DUE UNITED STATES

PAR. 9. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed. (Section 3466, Revised Statutes.)

PAR. 10. Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid. (Section 3467, Revised Statutes, as amended by section 518, Revenue Act of 1934.)

LIMITATION ON ASSESSMENTS AND SUITS BY THE UNITED STATES

PAR. 11. (a) Except in the case of income, war-profits, excess-profits, estate, and gift taxes—

(1) Notwithstanding the provisions of section 3182 of the Revised Statutes or any other provision of law, all internal-revenue taxes shall (except as provided in paragraph (2) or (3) of this subdivision) be assessed within four years after such taxes became due, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of five years after such taxes became due.

(2) In case of a false or fraudulent return with intent to evade tax, of a failure to file a return within the time required by law, or of a willful attempt in any manner to defeat or evade tax, the tax may be assessed, or a proceeding

in court for the collection of such tax may be begun without assessment, at any time.

(3) Where the assessment of any tax imposed by this Act or by prior Act of Congress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (A) within six years after the assessment of the tax, or (B) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer. (Section 1109(a) of the Revenue Act of 1926, as amended by section 619(a) of the Revenue Act of 1928.)

LIMITATION ON PROSECUTIONS FOR INTERNAL REVENUE OFFENSES

PAR. 12. (a) The Act entitled "An Act to limit the time within which prosecutions may be instituted against persons charged with violating internal revenue laws," approved July 5, 1884, as amended, and as reenacted by section 1110 of the Revenue Act of 1926, is amended to read as follows:

"That no person shall be prosecuted, tried, or punished, for any of the various offenses arising under the internal revenue laws of the United States unless the indictment is found or the information instituted within three years next after the commission of the offense, except that the period of limitation shall be six years—

"(1) for offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner,

"(2) for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof, and

"(3) for the offense of willfully aiding or assisting in, or procuring, counseling, or advising, the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document).

"For offenses arising under section 37 of the Criminal Code, where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof, the period of limitation shall also be six years. The time during which the person committing any of the offenses above mentioned is absent from the district wherein the same is committed shall not be taken as any part of the time limited by law for the commencement of such proceedings. Where a complaint is instituted before a commissioner of the United States within the period above limited, the time shall be extended until the discharge of the grand jury at its next session within the district."

(b) The amendment made by subsection (a) of this section shall apply to offenses whenever committed; except that it shall not apply to offenses the prosecution of which was barred before the date of the enactment of this Act. (Section 1108, Revenue Act of 1932.)

LIMITATIONS ON SUITS BY TAXPAYERS

PAR. 13. (a) Section 3226 of the Revised Statutes, as amended, is amended to read as follows:

"SEC. 3226. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which such suit or proceeding relates." (Section 1103, Revenue Act of 1932.)

LISTING OF TAXPAYERS

PAR. 14. Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects. (Section 3172 of Revised Statutes as reenacted by section 1115, Revenue Act of 1926.)

RECEIPTS FOR PAYMENT

PAR. 15. It shall be the duty of the collectors, or their deputies, in their respective districts, and they are authorized, to collect all the taxes imposed by law, however the same may be designated. And every collector and deputy collector shall give receipts for all sums collected by him, excepting only when the same are in payment for stamps sold and delivered; but no collector or deputy collector shall issue a receipt in lieu of a stamp representing a tax. (Section 3183, Revised Statutes, as amended by chapter 125, section 3, Act of March 1, 1879.)

SUITS TO RESTRAIN, BARRED

PAR. 16. No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court. (Section 3224, Revised Statutes.)

PENALTIES

PAR. 17. (a) Any person required under this Act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner

to evade or defeat any tax imposed by this Act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(d) Any person who willfully fails to pay, collect, or truthfully account for and pay over, any tax imposed by Titles IV, V, VI, VII, VIII, and IX, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of section 3176 of the Revised Statutes, as amended, or for any offense for which a penalty has been recovered under section 3256 of the Revised Statutes.

(e) Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

(f) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. (Section 1114 of the Revenue Act of 1926.)

PENALTY FOR FALSE CLAIM

PAR. 18. Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder; * * * or whoever shall enter into any agree-

ment, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; * * * shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. * * * (Section 35, Criminal Code of the United States, as amended by the Act approved June 18, 1934, Public, No. 394.)

RETURNS

NOTICE AND SUMMONS

PAR. 19. It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, (1) in case of a special tax, on or before the thirty-first day of July in each year, and (2) in other cases before the day on which the taxes accrue, to make a list or return, verified by oath, to the collector or a deputy collector of the district where located, of the articles or objects, including the quantity of goods, wares, and merchandise, made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: *Provided*, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, article or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: *Provided further*, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is erroneous, false, or fraudulent, or contains any undervaluation or understatement, or refuses to allow any regularly authorized Government officer to examine the books of such person, firm, or corporation, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person or any other person he may deem proper, to appear before him and produce such books at a time and place named in the summons,

and to give testimony or answer interrogatories, under oath, respecting any objects or income liable to tax or the returns thereof. The collector may summon any person residing or found within the State or Territory in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State or Territory, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned: *Provided*, That "person," as used in this section, shall be construed to include any corporation, joint-stock company or association, or insurance company when such construction is necessary to carry out its provisions. (Section 3173, Revised Statutes, as reenacted by section 1115, Revenue Act of 1926.)

INSPECTION OF RETURNS

PAR. 20. (a) Returns upon which the tax has been determined by the Commissioner shall constitute public records; but, except as hereinafter provided in this section and section 1203, they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary and approved by the President. Whenever a return is open to the inspection of any person a certified copy thereof shall, upon request, be furnished to such person under rules and regulations prescribed by the Commissioner with the approval of the Secretary. The Commissioner may prescribe a reasonable fee for furnishing such copy.

(b) (1) The Secretary and any officer or employee of the Treasury Department, upon request from the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, or a select committee of the Senate or House specially authorized to investigate returns by a resolution of the Senate or House, or a joint committee so authorized by concurrent resolution, shall furnish such committee sitting in executive session with any data of any character contained in or shown by any return.

(2) Any such committee shall have the right, acting directly as a committee, or by or through such examiners or agents as it may designate or appoint, to inspect any or all of the returns at such times and in such manner as it may determine.

(3) Any relevant or useful information thus obtained may be submitted by the committee obtaining it to the Senate or the House, or to both the Senate and the House, as the case may be.

(c) The proper officers of any State may, upon the request of the governor thereof, have access to the returns of any corporation, or to an abstract thereof showing the name and income of the corporation, at such times and in such manner as the Secretary may prescribe.

(d) All bona fide shareholders of record owning 1 per centum or more of the outstanding stock of any corporation shall, upon making request of the Commissioner, be allowed to examine the annual income returns of such corporation and of its subsidiaries. Any shareholder who pursuant to the provisions of this section is allowed to examine the return of any corporation, and who makes known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any such return, shall be guilty of a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both.

(e) The Commissioner shall as soon as practicable in each year cause to be prepared and made available to public inspection in such manner as he may

determine, in the office of the collector in each internal-revenue district and in such other places as he may determine, lists containing the name and the post-office address of each person making an income-tax return in such district. (Section 257, Revenue Act of 1926.)

PAR. 21. (d) The Joint Committee shall have the same right to obtain data and to inspect returns as the Committee on Ways and Means or the Committee on Finance, and to submit any relevant or useful information thus obtained to the Senate, the House of Representatives, the Committee on Ways and Means, or the Committee on Finance. The Committee on Ways and Means or the Committee on Finance may submit such information to the House or to the Senate, or to both the House and the Senate, as the case may be. (Section 1203(d), Revenue Act of 1926.)

REFUND OR CREDIT—LIMITATIONS

EFFECT OF EXPIRATION OF PERIOD OF LIMITATIONS AGAINST UNITED STATES

PAR. 22. Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid (whether before or after the enactment of this act) after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim. (Section 607 of the Revenue Act of 1928.)

EFFECT OF EXPIRATION OF PERIOD OF LIMITATIONS AGAINST TAXPAYER

PAR. 23. A refund of any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) made after the enactment of this Act, shall be considered erroneous—

(a) if made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed; or

(b) in the case of a claim filed within the proper time and disallowed by the Commissioner after the enactment of this Act, if the refund was made after the expiration of the period of limitation for filing suit, unless—

(1) within such period suit was begun by the taxpayer, or

(2) within such period, the taxpayer and the Commissioner agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of final decision in one or more named cases then pending before the United States Board of Tax Appeals or the courts. If such agreement has been entered into, the running of such statute of limitations shall be suspended in accordance with the terms of the agreement. (Section 608 of the Revenue Act of 1928, as amended by section 503 of the Revenue Act of 1934.)

ERRONEOUS CREDITS

PAR. 24. (a) *Credit against barred deficiency.*—Any credit against a liability in respect of any taxable year shall be void if any payment in respect of such liability would be considered an overpayment under section 607.

(b) *Credit of barred overpayment.*—A credit of an overpayment in respect of any tax shall be void if a refund of such overpayment would be considered erroneous under section 608.

(c) *Application of section.*—The provisions of this section shall apply to any credit made before or after the enactment of this Act. (Section 609 of the Revenue Act of 1928.)

RECOVERY OF AMOUNTS ERRONEOUSLY REFUNDED

PAR. 25. (a) Any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) refund of which is erroneously made, within the meaning of section 608, after the enactment of this Act, may be recovered by suit brought in the name of the United States, but only if such suit is begun within two years after the making of such refund.

(b) Any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) which has been erroneously refunded (if such refund would not be considered as erroneous under section 608) may be recovered by suit brought in the name of the United States, but only if such suit is begun before the expiration of two years after the making of such refund or before May 1, 1928, whichever date is later.

(c) Despite the provisions of subsections (a) and (b) such suit may be brought at any time within five years from the making of the refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact. (Section 610, Revenue Act of 1928, as amended by section 502, Revenue Act of 1934.)

INTEREST

PAR. 26. (a) Interest shall be allowed and paid upon any overpayment in respect of any internal-revenue tax, at the rate of 6 per centum per annum, as follows:

(1) In the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment of a tax imposed by the Revenue Act of 1921 or any subsequent revenue Act, then to the date of the assessment of that amount.

(2) In the case of a refund, from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days, such date to be determined by the Commissioner.

(b) As used in this section the term "additional assessment" means a further assessment for a tax of the same character previously paid in part, and includes the assessment of a deficiency of any income or estate tax imposed by the Revenue Act of 1924 or by any subsequent revenue Act. (Section 614 (a) and (b) of the Revenue Act of 1928.)

PAR. 27. (a) No interest shall be allowed on any claim up to the time of the rendition of judgment by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest, except as provided in subdivision (b).

(b) In any judgment of any court rendered (whether against the United States, a collector or deputy collector of internal revenue, a former collector or deputy collector, or the personal representative in case of death) for any overpayment in respect of any internal-revenue tax, interest shall be allowed at the rate of 6 per centum per annum upon the amount of the overpayment, from the date of the payment or collection thereof to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue. (Section 177 of the Judicial Code, as amended by section 1117 of the Revenue Act of 1926 and section 615 of the Revenue Act of 1928.)

REGULATIONS

RETROACTIVE REGULATIONS

PAR. 28. The Secretary, or the Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the internal revenue laws, shall be applied without retroactive effect. (Section 1108 (a), Revenue Act of 1926, as amended by section 605, Revenue Act of 1928, and by section 506, Revenue Act of 1934.)

WHEN LAW IS CHANGED

PAR. 29. The Commissioner may make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue. (Section 3447, Revised Statutes; United States Code, Title 26, section 1691(2).)

ADMINISTRATIVE REVIEW

PAR. 30. In the absence of fraud or mistake in mathematical calculation, the findings of facts in and the decision of the Commissioner upon (or in case the Secretary is authorized to approve the same, then after such approval) the merits of any claim presented under or authorized by the internal-revenue laws shall not, except as provided in Title IX of the Revenue Act of 1924, as amended, be subject to review by any other administrative or accounting officer, employee, or agent of the United States. (Section 1107, Revenue Act of 1926.)

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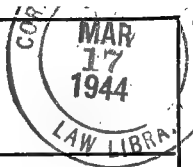
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U. S. TREASURY DEPARTMENT
BUREAU OF INTERNAL REVENUE



REGULATIONS 112

RELATING TO THE

**EXCESS PROFITS
TAX**

UNDER THE
INTERNAL REVENUE CODE AS AMENDED
(FOR TAXABLE YEARS BEGINNING AFTER
DECEMBER 31, 1941)



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1944

EXPLANATION OF REGULATIONS

SCOPE.—These regulations are applicable only to taxable years beginning after December 31, 1941, except that where it is appropriate under Regulations 109 to apply with respect to taxable years beginning after December 31, 1939, and before January 1, 1942, the rules applicable to taxable years beginning after December 31, 1941, these regulations shall be applicable. These regulations deal with the excess profits tax imposed by Subchapter E of Chapter 2 of the Internal Revenue Code, which tax is referred to in these regulations as the “excess profits tax.” Such tax is to be distinguished from the excess-profits tax imposed by Subchapter B of Chapter 2 of the Internal Revenue Code, referred to in these regulations as the “declared value excess-profits tax,” and so designated by section 506 of the Second Revenue Act of 1940, which tax continues in effect and complements the capital stock tax.

Each section, subsection, or paragraph of the Internal Revenue Code set forth in these regulations shall be considered as a part of the respective regulations section to which it corresponds.

ARRANGEMENT AND NUMBERING.—Each section of the regulations has been given a key number corresponding to the number of the section or subsection of the Internal Revenue Code which the regulations section interprets. Inasmuch as the regulations constitute Part 35 of Title 26 of the 1943 Supplement to the Code of Federal Regulations, each key number is preceded by the number 35 and a decimal point. The key number is followed by a dash (—) and the identifying number of the regulations section.

Except as otherwise indicated, the statutory references are to the Internal Revenue Code. As used in the regulations, the word “Code” means the Internal Revenue Code.

INDEX.—At the end of the regulations is an index to the material contained therein.

REGULATIONS 112
RELATING TO THE EXCESS PROFITS TAX

UNDER
**SUBCHAPTER E OF CHAPTER 2 OF THE INTERNAL
REVENUE CODE, AS AMENDED**

" (APPLICABLE ONLY TO TAXABLE YEARS BEGINNING AFTER DECEMBER
31, 1941)

TITLE 26—INTERNAL REVENUE
CHAPTER I, SUBCHAPTER A

PART 35

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PERTINENT ENACTING PROVISIONS

OF THE

INTERNAL REVENUE CODE

[Act February 10, 1939, 53 Stat., Part 1]

AN ACT

To consolidate and codify the internal revenue laws of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the laws of the United States hereinafter codified and set forth as a part of this act under the heading "Internal Revenue Title" are hereby enacted into law.

SEC. 2. CITATION.—This act and the internal revenue title incorporated herein shall be known as the Internal Revenue Code and may be cited as "I. R. C."

* * * * *

SEC. 6. ARRANGEMENT, CLASSIFICATION, AND CROSS REFERENCES.—The arrangement and classification of the several provisions of the Internal Revenue Title have been made for the purpose of a more convenient and orderly arrangement of the same, and, therefore, no inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion thereof, nor shall any outline, analysis, cross reference, or descriptive matter relating to the contents of said Title be given any legal effect.

* * * * *

EXCESS PROFITS TAX REGULATIONS

(APPLICABLE ONLY TO TAXABLE YEARS BEGINNING AFTER
DECEMBER 31, 1941)

SUBPART I

SEC. 710. IMPOSITION OF TAX. [ADDED BY SEC. 201, SECOND REV. ACT 1940; AMENDED BY SEC. 2, EXCESS PROFITS TAX AMENDMENTS 1941, BY SECS. 201(a) AND 202(e), REV. ACT 1941, AND BY SECS. 202, 203, 204, 205 (a) AND (g), 222(b), AND 223(a), REV. ACT 1942.]

(a) IMPOSITION.—

(1) GENERAL RULE.—There shall be levied, collected, and paid, for each taxable year, upon the adjusted excess-profits net income, as defined in subsection (b), of every corporation (except a corporation exempt under section 727) a tax equal to whichever of the following amounts is the lesser:

(A) 90 per centum of the adjusted excess-profits net income,

or

(B) an amount which when added to the tax imposed for the taxable year under Chapter 1 (other than section 102) equals 80 per centum of the corporation surtax net income, computed under section 15 or Supplement G, as the case may be, but without regard to the credit provided in section 26(e) (relating to income subject to the tax imposed by this subchapter).

(2) [Not applicable to taxable years under these regulations (section 229(a) (2), Rev. Act 1942).]

(3) [Not applicable to taxable years under these regulations (section 203, Rev. Act 1942).]

(4) MUTUAL INSURANCE COMPANIES.—In the case of a mutual insurance company other than life or marine, if the gross amount received from interest, dividends, rents, and premiums (including deposits and assessments) is over \$75,000 but less than \$125,000, the tax imposed under this section shall be an amount which bears the same proportion to the amount ascertained under this section, computed without reference to this paragraph, as the excess over \$75,000 of such gross amount received bears to \$50,000.

(5) DEFERMENT OF PAYMENT IN CASE OF ABNORMALITY.—If the adjusted excess profits net income (computed without reference to section 722) for the taxable year of a taxpayer which claims on its return, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, the benefits of section 722, is in excess of 50 per centum of its normal tax net income for such year, computed without the credit provided in section 26(e) (relating to adjusted excess profits net income), the amount of tax payable at the time prescribed for payment may be reduced by an amount equal to 33 per centum of the amount of the reduction

in the tax so claimed. For the purposes of section 271, if the tax payable is the tax so reduced, the tax so reduced shall be considered the amount shown on the return.

(b) **DEFINITION OF ADJUSTED EXCESS PROFITS NET INCOME.**—As used in this section, the term “adjusted excess profits net income” in the case of any taxable year means the excess profits net income (as defined in section 711) minus the sum of:

(1) **SPECIFIC EXEMPTION.**—A specific exemption of \$5,000, and in the case of a mutual insurance company (other than life or marine) which is an interinsurer or reciprocal underwriter a specific exemption of \$50,000;

(2) **EXCESS PROFITS CREDIT.**—The amount of the excess profits credit allowed under section 712; and

(3) **UNUSED EXCESS PROFITS CREDIT.**—The amount of the unused excess profits credit adjustment for the taxable year, computed in accordance with subsection (c).

(c) **UNUSED EXCESS PROFITS CREDIT ADJUSTMENT.**—

(1) **COMPUTATION OF UNUSED EXCESS PROFITS CREDIT ADJUSTMENT.**—The unused excess profits credit adjustment for any taxable year shall be the aggregate of the unused excess profits credit carry-overs and unused excess profits credit carry-backs to such taxable year.

(2) **DEFINITION OF UNUSED EXCESS PROFITS CREDIT.**—The term “unused excess profits credit” means the excess, if any, of the excess profits credit for any taxable year beginning after December 31, 1939, over the excess profits net income for such taxable year, computed on the basis of the excess profits credit applicable to such taxable year. For such purpose the excess profits credit and the excess profits net income for any taxable year beginning in 1940 shall be computed under the law applicable to taxable years beginning in 1941. The unused excess profits credit for a taxable year of less than twelve months shall be an amount which is such part of the unused excess profits credit determined under the first sentence of this paragraph as the number of days in the taxable year is of the number of days in the twelve months ending with the close of the taxable year.

(3) **AMOUNT OF UNUSED EXCESS PROFITS CREDIT CARRY-BACK AND CARRY-OVER.**—

(A) **Unused Excess Profits Credit Carry-Back.**—If for any taxable year beginning after December 31, 1941, the taxpayer has an unused excess profits credit, such unused excess profits credit shall be an unused excess profits credit carry-back for each of the two preceding taxable years, except that the carry-back in the case of the first preceding taxable year shall be the excess, if any, of the amount of such unused excess profits credit over the adjusted excess profits net income for the second preceding taxable year computed for such taxable year (i) by determining the unused excess profits credit adjustment without regard to such unused excess profits credit, and (ii) without the deduction of the specific exemption provided in subsection (b) (1).

(B) **Unused Excess Profits Credit Carry-Over.**—If for any taxable year beginning after December 31, 1939, the taxpayer

has an unused excess profits credit, such unused excess profits credit shall be an unused excess profits credit carry-over for each of the two succeeding taxable years, except that the carry-over in the case of the second succeeding taxable year shall be the excess, if any, of the amount of such unused excess profits credit over the adjusted excess profits net income for the intervening taxable year computed for such intervening taxable year (i) by determining the unused excess profits credit adjustment without regard to such unused excess profits credit or to any unused excess profits credit carry-back, and (ii) without the deduction of the specific exemption provided in subsection (b) (1). For the purposes of the preceding sentence, the unused excess profits credit for any taxable year beginning after December 31, 1941, shall first be reduced by the sum of the adjusted excess profits net income for each of the two preceding taxable years (computed for each such preceding taxable year (i) by determining the unused excess profits credit adjustment without regard to such unused excess profits credit or to the unused excess profits credit for the succeeding taxable year, and (ii) without the deduction of the specific exemption provided in subsection (b) (1)).

(4) No CARRY-BACK TO YEAR PRIOR TO 1941.—As used in this subsection, the term "preceding taxable year" and the term "preceding taxable years" do not include any taxable year beginning prior to January 1, 1941.

SEC. 35.710-1 SCOPE OF TAX.—The excess profits tax is imposed upon the adjusted excess profits net income of every corporation, both domestic and foreign, for each income-tax taxable year beginning after December 31, 1939, except certain corporations which are exempt. (See section 727.) A corporation the excess profits net income of which, computed as provided in section 711(a) (2) and (3), is not greater than \$5,000, or in the case of a mutual insurance company (other than life or marine) which is an interinsurer or reciprocal underwriter is not greater than \$50,000, need not file an excess profits tax return. (See section 729(b).) A personal service corporation, as defined in section 725, may, if it is not a member of an affiliated group of corporations filing consolidated returns under section 141, elect not to be subject to the excess profits tax, thereby making its income taxable to its shareholders as provided in Supplement S of Chapter 1 of the Internal Revenue Code. (See section 725.) The excess profits tax for any year shall not exceed an amount which when added to the normal tax and surtax for such year equals 80 percent of the corporation surtax net income computed without regard to the credit provided in section 26(e) for income subject to excess profits tax.

SEC. 35.710-2 MEASURE OF TAX.—The adjusted excess profits net income upon which is based the excess profits tax for a taxable year is determined by deducting from the excess profits net income (determined under the provisions of section 711 applicable to such year) the sum of:

(a) A specific exemption of \$5,000, except that in the case of a mutual insurance company (other than life or marine) which is an interinsurer or reciprocal underwriter the specific exemption is \$50,000.

(b) The excess profits credit allowed by section 712, and

(c) The unused excess profits credit adjustment (as defined in section 710 (c) (1)) consisting of the aggregate of the unused excess profits credit carry-overs from each of the two preceding excess profits tax taxable years and the excess profits credit carry-backs from each of the two succeeding excess profits tax taxable years, computed as provided in section 710 (c).

For the computation of corporation surtax net income computed without regard to the credit provided in section 26(e) relating to income subject to the excess profits tax, in those cases where the excess profits tax is an amount which when added to the tax imposed by Chapter 1 (other than section 102) equals 80 percent of such corporation surtax net income, see section 35.710-4.

As to the exemption of income in the case of certain corporations engaged in mining strategic minerals, see section 731; as to the excess profits tax in the case of corporations completing contracts under the Merchant Marine Act of 1936, see section 726; and in the case of corporations deriving abnormal income in the taxable year, see section 721.

For the computation of the excess profits tax for a taxable year of less than 12 months, see the provisions of section 711(a) (3).

SEC. 35.710-3 UNUSED EXCESS PROFITS CREDIT ADJUSTMENT.—(a) *Unused excess profits credit.*—The unused excess profits credit for any taxable year beginning after December 31, 1939, is the excess of the excess profits credit for the taxable year over the excess profits net income, if any, for such taxable year. In the case of a taxpayer entitled to use the excess profits credit based on income or the excess profits credit based on invested capital, the credit which results in the larger unused excess profits credit is used. The excess profits net income is computed on the basis of the excess profits credit so used. In computing the unused excess profits credit for a taxable year beginning in 1940, the excess profits credit and the excess profits net income for such taxable year shall be computed under the law applicable to taxable years beginning on January 1, 1941.

The unused excess profits credit for a taxable year of less than 12 months is reduced to such part of the unused excess profits credit determined in the manner prescribed in the preceding paragraph as the number of days in the taxable year of less than 12 months is of the number of days in the 12 months ending with the close of the taxable year. In determining the unused excess profits credit which is so reduced, the excess profits net income for the taxable year of less than

12 months is first placed on an annual basis under the provisions of section 711 (a) (3) (A) by reference to the number of days in the taxable year. For example, a taxpayer changes from the calendar year basis to a fiscal year basis ending January 31, and files a return for the taxable year January 1 to January 31, 1942. Its excess profits credit for this taxable year is \$91,250. Its excess profits net income computed on the basis of this taxable year is \$6,200, and this excess profits net income placed on an annual basis under the provisions of section 711(a)(3)(A) is \$73,000, that is, $\frac{365 \times \$6,200}{31}$. The unused

excess profits credit computed under the preceding paragraph is, therefore, \$18,250, the excess of the \$91,250 excess profits credit over the \$73,000 excess profits net income placed on an annual basis. The unused excess profits credit for the taxable year January 1 to January 31, 1942, is reduced to \$1,550, that is, $\frac{31 \times \$18,250}{365}$, or such part of \$18,250 as the number of days in the taxable year (31) is of the number of days in the 12 months ending with the close of the taxable year (365).

(b) *Unused excess profits credit adjustments.*—The unused excess profits credit adjustment is the aggregate of the portions of the unused excess profits credits for the two preceding and two succeeding taxable years which are treated under section 710(c) (3) as unused excess profits credit carry-overs and unused excess profits credit carry-backs to the taxable year. Under the provisions of section 710(c) (3) the unused excess profits credit for any taxable year beginning on or after January 1, 1942, is carried back to each of the two preceding taxable years (not considering as a preceding taxable year any taxable year beginning before January 1, 1941) and forms part of the unused excess profits credit adjustment for such preceding taxable year. The unused excess profits credit for any taxable year beginning after December 31, 1939, to the extent it is not used as a carry-back, is carried forward to the two succeeding taxable years and forms part of the unused excess profits credit adjustment for such of those succeeding taxable years as begin after December 31, 1940. The amount which is carried back or carried forward is limited in the case of each such preceding or succeeding taxable year to the portion of the unused excess profits credit which was not applied against excess profits net income (either as part of the excess profits credit carry-over in the case of a taxable year beginning in 1940 or as part of the unused excess profits credit adjustment in the case of a taxable year beginning after December 31, 1940) in determining the adjusted excess profits net income for the taxable years, if any, before such preceding or succeeding taxable year. The amount of the unused

excess profits credit which was so applied is determined as follows: The adjusted excess profits net income is computed for each such taxable year without the specific exemption of \$5,000 allowed by section 710(b)(1), and without credit of any carry-over or carry-back from the taxable year in which such unused excess profits credit arose or from any taxable year subsequent thereto. The unused excess profits credit, which is a carry-over or a carry-back to such taxable year, is considered to have been applied against the amount so computed.

The entire unused excess profits credit for any taxable year beginning after December 31, 1939, but not beginning after December 31, 1941, is carried over to the first succeeding taxable year. The unused excess profits credit is carried over to the second succeeding taxable year to the extent it exceeds the adjusted excess profits net income for the first succeeding taxable year. For the purpose of determining this excess, the adjusted excess profits net income is computed without credit of the specific exemption of \$5,000 allowed by section 710(b)(1) and without credit of the carry-over from the taxable year in which the unused excess profits credit arose or of any carry-over or carry-back from a taxable year subsequent thereto. The entire unused excess profits credit for any taxable year beginning after December 31, 1941, is carried back to the second preceding taxable year if such taxable year began after December 31, 1940. If the second preceding taxable year began prior to January 1, 1941, the entire unused excess profits credit is carried back to the first preceding taxable year, since a taxable year beginning prior to January 1, 1941, is not considered a "preceding taxable year" for the purposes of section 710(c)(3), and no part of the adjusted excess profits net income for such a taxable year reduces the amount of the unused excess profits credit for a taxable year beginning after December 31, 1941, which may be carried back or carried over to other taxable years. If the second preceding taxable year began after December 31, 1940, the unused excess profits credit is carried back to the first preceding taxable year to the extent it exceeds the adjusted excess profits net income for the second preceding taxable year, such adjusted excess profits net income being computed without credit of the specific exemption of \$5,000 and without credit of any carry-back from the taxable year in which the unused excess profits credit arose. The unused excess profits credit is carried over to the first succeeding taxable year to the extent that it exceeds the aggregate of the adjusted excess profits net incomes for the two preceding taxable years (computed for each such taxable year without credit of the specific exemption of \$5,000 and without credit of any carry-back from the taxable year in which such unused excess profits credit arose or of any carry-back from a taxable year subsequent thereto), not considering as a preceding taxable year any taxable year beginning prior to

January 1, 1941. The unused excess profits credit is carried over to the second succeeding taxable year to the extent that the unused excess profits credit exceeds the aggregate of the adjusted excess profits net income for the two preceding taxable years and for the first succeeding taxable year (computed for each such taxable year without credit of the specific exemption of \$5,000 and without credit of any carry-over or carry-back from the taxable year in which the unused excess profits credit arose or from any taxable year subsequent thereto), not considering as a preceding taxable year any taxable year beginning prior to January 1, 1941.

The following example illustrates the operation of section 710(c) (3) :

Example. It is assumed that the taxpayer, on the calendar year basis, has an excess profits credit of \$100,000. It has no unused excess profits credit for 1940 or 1941. It has \$125,000 excess profits net income in 1942, \$185,000 excess profits net income in 1943, \$55,000 excess profits net income in 1944, \$25,000 excess profits net income in 1945, \$30,000 excess profits net income in 1946, \$160,000 excess profits net income in 1947, and \$200,000 excess profits net income in 1948. It has no unused excess profits credit in 1949 or 1950. Since the taxpayer has a \$100,000 excess profits credit, and excess profits net income of only \$55,000 in 1944, \$25,000 in 1945, and \$30,000 in 1946, it has an unused excess profits credit of \$45,000 in 1944, \$75,000 in 1945, and \$70,000 in 1946. Such unused excess profits credit will form the basis for carry-backs and carry-overs computed as follows :

(1) The amount of the \$45,000 unused excess profits credit for 1944 which may be used as a carry-back to 1942 and 1943 and as a carry-over to 1945 and 1946 is computed as follows :

(i) For 1942, the carry-back is \$45,000 (the amount of the unused excess profits credit).

(ii) For 1943, the carry-back is \$20,000, determined by deducting from the \$45,000 unused excess profits credit the adjusted excess profits net income for 1942 computed without the deduction of the specific exemption or any carry-back from 1944 (the \$125,000 excess profits net income for 1942 less the \$100,000 excess profits credit for such taxable year, or \$25,000).

(iii) For 1945 and 1946 there is no carry-over from 1944 since all of the unused excess profits credit has been applied against the excess profits net income for 1942 and 1943. To determine the carry-over, the \$45,000 unused excess profits credit must first be reduced by the sum of the adjusted excess profits net income for 1942 and 1943 computed for each such year without the deduction of any \$5,000 specific exemption or of any carry-back from 1944 or from any year subsequent to 1944 (for 1942, the \$125,000 excess

profits net income less the \$100,000 excess profits credit for such year, or \$25,000, plus, for 1943, the \$185,000 excess profits net income less the \$100,000 excess profits credit for such year, or \$85,000, a total of \$110,000).

(2) The amount of the \$75,000 unused excess profits credit for 1945 which may be used as a carry-back to 1943 and 1944, and as a carry-over to 1946 and 1947, is computed as follows:

(i) For 1943, the carry-back is \$75,000 (the amount of the unused excess profits credit).

(ii) For 1944, the carry-back is \$10,000, determined by deducting from the \$75,000 unused excess profits credit the \$65,000 adjusted excess profits net income for 1943 computed without the deduction of the \$5,000 specific exemption or of any carry-back from 1945 (the \$185,000 excess profits net income for 1943, less the \$100,000 excess profits credit and the \$20,000 excess profits credit carry-back from 1944).

(iii) For 1946, the carry-over is \$10,000, determined by reducing the \$75,000 unused excess profits credit by the sum of the adjusted excess profits net incomes for 1943 and 1944 computed for each such year without the deduction of any \$5,000 specific exemption or of any carry-back from 1945 or any year subsequent to 1945 (for 1943, the \$185,000 excess profits net income less the \$100,000 excess profits credit and the \$20,000 carry-back from 1944, or \$65,000, plus, for 1944, the \$55,000 excess profits net income less the \$100,000 excess profits credit, or \$0 adjusted excess profits net income, a total of \$65,000).

(iv) For 1947, the carry-over is also \$10,000, since there was no adjusted excess profits net income for 1946, computed without the deduction of the \$5,000 specific exemption or of any carry-over from 1945 or of any carry-back from any year subsequent to 1945 (the \$30,000 excess profits net income for 1946 less the \$100,000 excess profits credit), to offset any of the carry-over to such year.

(3) The amount of the \$70,000 unused excess profits credit for 1946 which may be taken as a carry-back to 1944 and 1945, and as a carry-over to 1947 and 1948, is computed as follows:

(i) For 1944, the carry-back is \$70,000 (the unused excess profits credit).

(ii) For 1945, the carry-back is also \$70,000, since there was no adjusted excess profits net income for 1944, computed without the deduction of the \$5,000 specific exemption or of the carry-back from 1946 (the excess profits net income of \$55,000 for 1944 less the \$100,000 excess profits credit and the \$10,000 carry-back from 1945) to offset any of such unused excess profits credit for 1946.

(iii) For 1947, the carry-over is also \$70,000, since there was no adjusted excess profits net income in 1944 or 1945 to offset any of

the unused excess profits credit for 1946. The carry-over to 1947 is computed by reducing the \$70,000 unused excess profits credit by the sum of the adjusted excess profits net incomes for 1944 and 1945, computed for each such year without the deduction of any \$5,000 specific exemption or of any carry-back from 1946 or from any year subsequent to 1946. (For 1944, the adjusted excess profits net income so computed is \$0, that is, the \$55,000 excess profits net income for such year less the \$100,000 excess profits credit and the \$10,000 carry-back from 1945. For 1945, the adjusted excess profits net income so computed is \$0, that is, the \$25,000 excess profits net income for 1945 less the \$100,000 excess profits credit.)

(iv) For 1948, the carry-over is \$20,000, computed by reducing the \$70,000 carry-over to 1947 by the adjusted excess profits net income for 1947 computed without the deduction of the \$5,000 specific exemption or of the carry-over from 1946 or of any carry-back from a year subsequent to 1946 (that is, the \$160,000 excess profits net income for 1947 less the \$100,000 excess profits credit and the \$10,000 carry-over from 1945, or \$50,000).

The aggregate of the carry-backs and carry-overs to each taxable year is the unused excess profits credit adjustment for such taxable year which may be credited against excess profits net income to determine adjusted excess profits net income. Therefore, the unused excess profits credit adjustment for 1942 is \$45,000, the carry-back to that year from 1944. The unused excess profits credit adjustment for 1943 is \$95,000, the aggregate of the \$20,000 carry-back from 1944 and the \$75,000 carry-back from 1945. The unused excess profits credit adjustment for 1947 is \$80,000, the aggregate of the \$10,000 carry-over from 1945 and the \$70,000 carry-over from 1946. The unused excess profits credit adjustment for 1948 is \$20,000, the carry-over from 1946.

In the case of a mutual insurance company (other than life or marine) which is an interinsurer or reciprocal underwriter, the \$50,000 exemption allowed in such cases under section 710(b) (1) is to be substituted wherever reference is made in this section to the \$5,000 specific exemption.

(c) *Ascertainment of unused excess profits credit adjustment dependent upon unused excess profits credit carry-back.*—If the taxpayer is entitled in computing its unused excess profits credit adjustment to an unused excess profits credit carry-back which it is not able to ascertain at the time its return is due, it shall compute the unused excess profits credit adjustment on its return without regard to such unused excess profits credit carry-back. When the taxpayer ascertains the unused excess profits credit carry-back, it may file a claim for credit or refund of the overpayment, if any, resulting from the failure to compute the

unused excess profits credit adjustment for the taxable year with the inclusion of such carry-back. Under the provisions of section 3771(e), as added by section 153(d) of the Revenue Act of 1942, no interest is allowed with respect to any such overpayment for the period prior to the filing of the claim for credit or refund of such overpayment or prior to the filing of a petition to The Tax Court of the United States asserting such overpayment, whichever is earlier. If the taxpayer files a claim based upon the overpayment caused by a carry-back from the first succeeding taxable year, and later ascertains that it is entitled to a carry-back from the second succeeding taxable year, it shall file a second claim for credit or refund based on the overpayment, if any, caused by the failure to take into account the carry-back from such second succeeding taxable year.

SEC. 35.710-4 RATE OF TAX.—The excess profits tax shall be whichever of the following is the lesser:

(a) an amount equal to 90 per cent of the adjusted excess profits net income, or

(b) an amount which when added to the tax imposed for the taxable year under Chapter 1 (not including the tax under section 102 on account of the improper accumulation of surplus) equals 80 per cent of the corporation surtax net income, computed under section 15 or Supplement G (relating to insurance companies), as the case may be, but without regard to the credit provided in section 26(e) relating to income subject to excess profits tax.

For the purposes of section 710(a)(1)(B) and of clause (b) of the preceding sentence, the tax imposed for the taxable year under Chapter 1 is the sum of the normal tax and surtax for such year prior to the credit under section 131 for taxes paid to a foreign country or possession of the United States. The corporation surtax net income for such purposes shall be computed by disregarding the credit under section 26(e) (relating to income subject to excess profits tax), otherwise provided in section 15(a) or Supplement G as a reduction against net income, both in determining corporation surtax net income and in determining the amount of net income upon which is computed the 85 per cent limitation upon the credit for dividends received. In all other respects, corporation surtax net income shall be computed as provided in section 15(a) or Supplement G as the case may be.

The application of section 710(a)(1) and of this section may be shown by the following example:

Assume that Corporation A, which makes its return on the calendar year basis, is a public utility corporation within the definition in section 26(h)(2)(A). Its net income for 1942 is \$411,000 and includes \$100,000 of dividends upon the common stock of a domestic manufacturing company, \$10,000 of dividends upon the preferred stock (as

defined in section 26(h) (2) (B).) of a public utility corporation which it owns, and \$1,000 of interest on certain United States Government obligations which is exempt from the normal tax. It has paid a dividend of \$5,000 on its preferred stock (as defined in section 26(h) (2) (B)). Its excess profits net income is \$500,000, its excess profits credit is \$145,000, and it has no unused excess profits credit adjustment. Its excess profits tax is \$254,955, computed as follows:

Excess profits tax

1. Excess profits net income.....	\$500, 000
2. Specific exemption.....	\$5, 000
3. Excess profits credit.....	145, 000
	<hr/>
4. Total of item 2 and item 3.....	150, 000
	<hr/>
5. Adjusted excess profits net income.....	350, 000
6. Excess profits tax (90 percent of item 5).....	315, 000
	<hr/>
7. Net income (computed without regard to credit provided in section 26(e) relating to income subject to excess profits tax).....	411, 000
8. (a) Total dividends received.....	\$110, 000
(b) Less dividends received on preferred stock of a public utility corporation.....	10, 000
	<hr/>
(c) Difference.....	100, 000
	<hr/>
9. Less:	
(a) Dividends received credit (85 percent of item 8 (c) but not in excess of 85 percent of item 7).....	85, 000
(b) Dividends paid on certain preferred stock.....	5, 000
	<hr/>
	90, 000
	<hr/>
10. Corporation surtax net income (computed without regard to the credit provided in section 26(e)) (item 7 minus item 9).....	321, 000
	<hr/>
11. 80 percent of item 10.....	256, 800
12. Income tax under Chapter 1 (other than section 102) for the taxable year (item 31).....	1, 845
	<hr/>
13. Excess of item 11 over item 12.....	254, 955
	<hr/>
14. Excess profits tax (item 6 or item 13, whichever is lesser).....	254, 955

Normal tax

15. Net income.....	\$411, 000
16. Less:	
Credit under section 26(a) for interest on certain United States obligations.....	1, 000
	<hr/>
17. Adjusted net income.....	410, 000
18. Less income subject to excess profits tax (credit under section 26(e)) (item 5).....	350, 000
	<hr/>

Normal tax—Continued

19. Item 17 minus item 18.....	\$60,000
20. Total dividends received.....	\$110,000
21. Dividends received credit (85 percent of item 20 but not in excess of 85 percent of item 19).....	51,000
22. Normal tax net income.....	9,000
23. Normal tax (\$750 plus 17 percent of \$4,000).....	1,430

Surtax

24. Net income.....	\$411,000
25. Less income subject to excess profits tax (credit under section 26(e)) (item 5).....	350,000
26. Item 24 minus item 25.....	61,000
27. (a) Total dividends received.....	\$110,000
(b) Less dividends received on preferred stock of pub- lic utility corporation.....	10,000
(c) Difference.....	100,000
28. Less: (a) Dividends received credit (85 percent of item 27(c) but not in excess of 85 percent of item 26).....	51,850
(b) Dividends paid on certain preferred stock.....	5,000
	56,850
29. Corporation surtax net income.....	4,150
30. Surtax (10 percent of item 29).....	415
31. Total normal tax and surtax (item 23 plus item 30).....	1,845

If a mutual insurance company, other than life or marine, receives a gross amount from interest, dividends, rents, and premiums (including deposits and assessments) in excess of \$75,000 but less than \$125,000, the tax imposed under section 710 is an amount which bears the same proportion to the amount of tax otherwise determined under such section, computed without regard to section 710(a)(4) and the provisions of this sentence, as the excess over \$75,000 of such gross amount received bears to \$50,000. For example, assume that a mutual insurance company (other than a life or marine insurance company) receives a gross amount from interest, dividends, rents, and premiums of \$115,000, and that its excess profits tax computed under section 710 (a) (1) is \$18,000. Under section 710(a)(4), the excess profits tax imposed under section 710 is \$14,400, that is, $\frac{40,000 \times \$18,000}{50,000}$.

SEC. 35.710-5 DEFERMENT OF PAYMENT OF TAX IN CASE OF BASE PERIOD OR INVESTED CAPITAL ABNORMALITY.—If a taxpayer claims the benefits of section 722 (relating to general excess profits tax relief through a constructive average base period net income), it must make its return and compute and pay its tax without the benefits of such section, and not later than six months after the date prescribed by

law for the filing of its return make application for relief under such section. (See section 722(d).) However, if the adjusted excess profits net income so computed on its return (without the benefits of section 722) for such year exceeds 50 percent of the taxpayer's normal tax net income for such year, computed without the credit provided in section 26(e) for income subject to excess profits tax, and if the taxpayer on its return claims to be entitled to the benefits of section 722, the amount of tax payable at the time prescribed for payment may be reduced by an amount equal to 33 percent of the reduction in tax so claimed. (See section 710(a)(5).) In computing the normal tax net income for purposes of the 50 percent determination, the credit for dividends received under section 26(b) shall be limited to 85 percent of adjusted net income unreduced by the credit under section 26(e) for income subject to excess profits tax.

The amount of reduction in tax claimed under section 722 shall be the difference between the amount of tax computed under section 710(a)(1) without the benefit of section 722 (prior to the credit under section 729 for taxes paid to a foreign country or to a possession of the United States, to the credit under section 783 for debt retirement, and to the adjustment under section 734 on account of an inconsistent position) and the amount of tax so computed by using instead of the actual excess profits credit the excess profits credit based upon the constructive average base period net income claimed by the taxpayer. In any case in which the excess profits tax computed with the use of the constructive average base period net income is determined under section 710(a)(1)(B) as an amount which when added to the normal tax and surtax imposed under Chapter 1 equals 80 percent of the corporation surtax net income (computed without regard to the credit under section 26(e) for income subject to excess profits tax), the credit for income subject to excess profits tax provided in section 26(e), and used in determining normal tax net income and corporation surtax net income shall be computed for the purposes of determining such normal tax and surtax by using the excess profits credit based upon the constructive average base period net income in lieu of the actual excess profits credit.

A taxpayer which claims to be entitled to a tax deferment under the provisions of section 710(a)(5) and of this section must, at the time of filing its excess profits tax return on Form 1121, attach thereto an application for relief under section 722 on Form 991 (revised January, 1943). The application must set forth under oath each ground under section 722 upon which the application for relief is based and facts sufficient to apprise the Commissioner of the exact basis thereof and to establish eligibility for relief, as well as data and information in sufficient detail to establish the amount of construc-

tive average base period net income claimed, the amount of tax reduction claimed by the use of section 722, and the amount of tax deferment claimed on the return. In any case in which an application for relief on Form 991 (revised January, 1943) is not so attached to the excess profits tax return, the taxpayer shall not be deemed to have claimed on its return the benefits of section 722. In such case the amount of tax deferment claimed under section 710(a)(5) and this section shall be added to the amount of tax otherwise shown by the taxpayer to be payable. For the purposes of section 271 (made applicable to Subchapter E of Chapter 2 by section 729) relating to the definition of deficiency, the amount of tax shown by the taxpayer to be payable so increased shall be considered the amount of tax shown on the return.

For the purposes of section 271, in case a taxpayer has claimed a tax reduction under section 710(a)(5) and has attached Form 991 (revised January, 1943) to its excess profits tax return as provided in this section, the tax so reduced shall be the tax shown on the return.

If a constructive average base period net income has been finally determined and has been used in computation of the excess profits tax for a prior excess profits tax taxable year under section 722 and under regulations prescribed under such section, such constructive average base period net income may be applicable in the computation of the excess profits tax for the current excess profits tax taxable year. In such case, the excess profits tax for such current year shall be computed with the use of such constructive average base period net income, and the provisions of section 710(a)(5) shall be inapplicable with respect to such year.

The application of section 710(a)(5) may be illustrated by the following example:

Assume that Corporation B, which makes its return on the calendar year basis, has for 1942 a net income of \$1,010,000, which includes \$300,000 of dividends on the common stock of domestic manufacturing corporations, \$10,000 of interest on certain United States Government obligations which is exempt from the normal tax, and \$200,000 of long-term capital losses which are offset against an equal amount of short-term capital gains. Its adjusted net income is \$1,000,000, and it has an excess profits credit of \$95,000, and no unused excess profits credit adjustment. It has filed, with its excess profits tax return for 1942, an application for relief under section 722 in which it claims a constructive average base period net income of \$600,000. Its excess profits tax return for 1942, computed without regard to section 722, shows an amount of tax deferred under section 710(a)(5) of \$99,584.10, and an excess profits tax due of \$494,685.90, computed as follows:

Excess profits tax

1. Normal tax net income (computed without allowance of credit under section 26(e) for income subject to excess profits tax and without allowance of dividends received credit) (item 22) -----	\$1, 000, 000. 00
2. Plus long-term capital loss adjustment -----	200, 000. 00
3. Item 1 plus item 2 -----	1, 200, 000. 00
4. Less dividend received credit adjustment (100 percent of item 25) -----	300, 000. 00
5. Excess profits net income -----	900, 000. 00
6. Less specific exemption -----	\$5, 000. 00
7. Excess profits credit -----	95, 000. 00
8. Total of item 6 and item 7 -----	100, 000. 00
9. Adjusted excess profits net income (item 5 minus item 8) -----	800, 000. 00
10. Excess profits tax (90 percent of item 9) -----	720, 000. 00
11. Net income (computed without regard to credit provided in section 26(e) relating to income subject to excess profits tax) (item 21) -----	1, 010, 000. 00
12. Dividends received -----	\$300, 000. 00
13. Less dividends received credit (85 percent of item 12, but not in excess of 85 percent of item 11) -----	255, 000. 00
14. Corporation surtax net income (computed without regard to the credit provided in section 26(e)) (item 11 minus item 13) -----	755, 000. 00
15. 80 percent of item 14 -----	604, 000. 00
16. Income tax under Chapter 1 (other than section 102) for the taxable year (item 36) -----	9, 730. 00
17. Excess of item 15 over item 16 -----	594, 270. 00
18. Excess profits tax (item 10 or item 17, whichever is lesser) ---	594, 270. 00
19. Less tax deferred under section 710(a) (5) (item 56) -----	99, 584. 10
20. Excess profits tax payable (item 18 minus item 19) -----	494, 685. 90

Normal tax

21. Net income -----	\$1, 010, 000. 00
22. Adjusted net income (item 21 minus \$10,000 interest on certain United States obligations) -----	1, 000, 000. 00
23. Less income subject to excess profits tax (credit under section 26(e)) (item 9) -----	800, 000. 00
24. Item 22 minus item 23 -----	200, 000. 00
25. Dividends received -----	\$300, 000. 00
26. Less dividends received credit (85 percent of item 25 but not in excess of 85 percent of item 24) -----	170, 000. 00
27. Normal tax net income -----	30, 000. 00

Normal tax—Continued

28. Normal tax (\$4,250 plus 31 percent of \$5,000) ----- \$5,800.00

Surtax

29. Net income (item 21) ----- \$1,010,000.00

30. Less income subject to excess profits tax (credit under section 26(e)) (item 9) ----- 800,000.00

31. Item 29 minus item 30 ----- 210,000.00

32. Dividends received ----- \$300,000.00

33. Less dividends received credit (85 percent of item 32 but not in excess of 85 percent of item 31) ----- 178,500.00

34. Corporation surtax net income ----- 31,500.00

35. Surtax (\$2,500 plus 22 percent of \$6,500) ----- 3,930.00

36. Total normal tax and surtax (item 28 plus item 35) ----- 9,730.00

Percentage which adjusted excess profits net income bears to normal tax net income computed without credit under section 26(e) for income subject to excess profits tax

37. Adjusted excess profits net income computed without regard to section 722 (item 9) ----- \$800,000.00

38. Adjusted net income (item 22) ----- 1,000,000.00

39. Dividends received ----- \$300,000

40. Dividends received credit (85 percent of item 39 but not in excess of 85 percent of item 38) ----- 255,000.00

41. Normal tax net income (computed without regard to the credit for income subject to excess profits tax under section 26(e)) ----- 745,000.00

42. Percentage which item 37 bears to item 41 ----- percent 107

Tax deferred under section 710(a)(5)

EXCESS PROFITS TAX UNDER SECTION 722

43. Excess profits net income (item 5) ----- \$900,000.00

44. Less specific exemption ----- \$5,000.00

45. Excess profits credit based on constructive excess profits net income under section 722 (95 percent of \$600,000) ----- 570,000.00

46. Item 44 plus item 45 ----- 575,000.00

47. Adjusted excess profits net income computed under section 722 (item 43 minus item 46) ----- 325,000.00

48. Excess profits tax under section 722 (90 percent of item 47) ----- 292,500.00

49. Corporation surtax net income (computed without regard to the credit provided in section 26(e)) (item 14) ----- 755,000.00

*Tax deferred under section 710(a)(5)—Con.***EXCESS PROFITS TAX UNDER SECTION 722—CON.**

50. 80 percent of item 49-----	\$604,000.00
51. Income tax under Chapter 1 (other than section 102) for the taxable year, computed with the excess profits tax determined under section 722 (item 72)-----	169,600.00
52. Excess of item 50 over item 51-----	434,400.00
53. Excess profits tax computed without the benefit of section 722 (item 17)-----	594,270.00
54. Excess profits tax computed under section 722 (item 48 or item 52, whichever is lesser)-----	292,500.00
55. Amount of tax reduction claimed under section 722 (item 53 minus item 54)-----	301,770.00
56. Amount of tax deferred under section 710(a)(5) (83 percent of item 55)-----	99,584.10

Normal tax

57. Net income (item 21)-----	\$1,010,000.00
58. Adjusted net income (item 22)-----	1,000,000.00
59. Less income subject under section 722 to excess profits tax (credit under section 26(e)) (item 47)-----	325,000.00
60. Item 58 minus item 59-----	675,000.00
61. Dividends received-----	\$300,000.00
62. Less dividends received credit (85 percent of item 61 but not in excess of 85 percent of item 60)-----	255,000.00
63. Normal-tax net income-----	420,000.00
64. Normal tax (24 percent of item 63)-----	100,800.00

Surtax

65. Net income (item 21)-----	\$1,010,000.00
66. Less income subject under section 722 to excess profits tax (credit under section 26(e)) (item 47)-----	325,000.00
67. Item 65 minus item 66-----	685,000.00
68. Dividends received-----	\$300,000.00
69. Less dividends received credit (85 percent of item 68 but not in excess of 85 percent of item 67)-----	255,000.00
70. Corporation surtax net income (item 67 minus item 69)-----	430,000.00
71. Surtax (16 percent of item 70)-----	68,800.00
72. Total normal tax and surtax (item 64 plus item 71)-----	169,600.00

SEC. 711. EXCESS PROFITS NET INCOME. [ADDED BY SEC. 201, SECOND REV. ACT 1940; AMENDED BY SECS. 3 AND 12(b), EXCESS PROFITS TAX AMENDMENTS 1941, BY SEC. 202 (c) AND (d), REV. ACT 1941, AND BY SECS. 205 (b) AND (c), 206, 207, 208, 209 (a) AND (b), 210, 211, AND 213, REV. ACT 1942.]

(a) **TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1939.**—The excess profits net income for any taxable year beginning after December

31, 1939, shall be the normal-tax income, as defined in section 13(a)(2), for such year except that the following adjustments shall be made:

(1) **EXCESS PROFITS CREDIT COMPUTED UNDER INCOME CREDIT.**—If the excess profits credit is computed under section 713, the adjustments shall be as follows:

(A) **Income Subject to Excess Profits Tax.**—In computing such normal-tax net income the credit provided in section 26(e) (relating to income subject to the tax imposed by this subchapter) shall not be allowed;

(B) **Gains and Losses From Sales or Exchanges of Capital Assets.**—There shall be excluded gains and losses from sales or exchanges of capital assets held for more than 6 months.

(C) **Income From Retirement or Discharge of Bonds, and So Forth.**—There shall be excluded, in the case of any taxpayer, income derived from the retirement or discharge by the taxpayer of any bond, debenture, note, or certificate or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for more than 6 months, including, in case the issuance was at a premium, the amount includible in income for such year solely because of such retirement or discharge;

(D) **Refunds and Interest on Agricultural Adjustment Act Taxes.**—There shall be excluded income attributable to refund of tax paid under the Agricultural Adjustment Act of 1933, as amended, and interest upon any such refund;

(E) **Recoveries of Bad Debts.**—There shall be excluded income attributable to the recovery of a bad debt if a deduction with reference to such debt was allowable from gross income for any taxable year beginning prior to January 1, 1940;

(F) **Dividends Received.**—The credit for dividends received shall apply, without limitation, to dividends on stock of domestic corporations.

(G) [Not applicable to taxable years under these regulations (section 206(b)(1), Rev. Act 1942).]

(H) **Life Insurance Companies.**—In the case of a life insurance company, there shall be deducted from the normal tax net income, the excess of (1) the product of (i) the figure determined and proclaimed under section 202(b) and (ii) the excess profits net income computed without regard to this subparagraph, over (2) the adjustment for certain reserves provided in section 202(c).

(I) **Nontaxable Income of Certain Industries With Depletable Resources.**—In the case of a producer of minerals, or a producer of logs or lumber from a timber block, as defined in section 735, there shall be excluded nontaxable income from exempt excess output of mines and timber blocks and nontaxable bonus income provided in section 735.

(J) **NET OPERATING LOSS DEDUCTION ADJUSTMENT.**—The net operating loss deduction shall be adjusted as follows:

(i) In computing the net operating loss for any taxable year under section 122(a), and the net income for any taxable year under section 122(b), no deduction shall be

allowed for any excess profits tax imposed by this subchapter, and, if the excess profits credit for such taxable year was computed under section 714, the deduction for interest shall be reduced by the amount of any reduction under paragraph (2) (B) for such taxable year; and

(ii) In lieu of the reduction provided in section 122(c), such reduction shall be in the amount by which the excess profits net income computed with the exceptions and limitations specified in section 122(d) (1), (2), (3), and (4) and computed without regard to subparagraph (B), without regard to any credit for dividends received, and without regard to any credit for interest received provided in section 26(a) exceeds the excess profits net income (computed without the net operating loss deduction).

(2) **EXCESS PROFITS CREDIT COMPUTED UNDER INVESTED CAPITAL CREDIT.**—If the excess profits credit is computed under section 714, the adjustments shall be as follows:

(A) **Dividends Received.**—The credit for dividends received shall apply, without limitation, to all dividends on stock of all corporations, except that no credit for dividends received shall be allowed with respect to dividends (actual or constructive) on stock of foreign personal holding companies or dividends on stock which is not a capital asset.

(B) **Interest.**—The deduction for interest shall be reduced by an amount equal to 50 per centum of so much of such interest as represents interest on the indebtedness included in the daily amounts of borrowed capital (determined under section 719(a));

(C) **Income Subject to Excess-Profits Tax.**—In computing such normal-tax net income the credit provided in section 26(e) (relating to income subject to the tax imposed by this subchapter) shall not be allowed;

(D) **Gains and Losses From Sales or Exchanges of Capital Assets.**—There shall be excluded gains and losses from sales or exchanges of capital assets held for more than 6 months.

(E) **Income From Retirement or Discharge of Bonds, and So Forth.**—There shall be excluded, in the case of any taxpayer, income derived from the retirement or discharge by the taxpayer of any bond, debenture, note, or certificate or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for more than 6 months, including, in case the issuance was at a premium, the amount includible in income for such year solely because of such retirement or discharge;

(F) **Refunds and Interest on Agricultural Adjustment Act Taxes.**—There shall be excluded income attributable to refund of tax paid under the Agricultural Adjustment Act of 1933, as amended, and interest upon any such refund;

(G) **Interest on Certain Government Obligations.**—The normal-tax net income shall be increased by an amount equal to the amount of the interest on obligations held during the taxable year which are described in section 22(b) (4) any part of the interest from which is excludible from gross income or allowable as a credit against net income, if the taxpayer has so elected under section 720(d); and

(H) Recoveries of Bad Debts.—There shall be excluded income attributable to the recovery of a bad debt if a deduction with reference to such debt was allowable from gross income for any taxable year beginning prior to January 1, 1940.

(I) [Not applicable to taxable years under these regulations (section 206(b) (2), Rev. Act 1942).]

(J) In the case of a life insurance company, there shall be deducted from the normal tax net income, 50 per centum of the excess of (1) the product of (i) the figure determined and proclaimed under section 202(b) and (ii) the excess profits net income computed without regard to this subparagraph, over (2) the adjustment for certain reserves provided in section 202(c).

(K) Nontaxable Income of Certain Industries With Depletable Resources.—In the case of a producer of minerals, or a producer of logs or lumber from a timber block, as defined in section 735, there shall be excluded nontaxable income from exempt excess output of mines and timber blocks and nontaxable bonus income provided in section 735.

(L) NET OPERATING LOSS DEDUCTION ADJUSTMENT.—The net operating loss deduction shall be adjusted as follows:

(i) In computing the net operating loss for any taxable year under section 122(a), and the net income for any taxable year under section 122(b), no deduction shall be allowed for any excess profits tax imposed by this subchapter, and, if the excess profits credit for such taxable year was computed under section 714, the deduction for interest shall be reduced by the amount of any reduction under subparagraph (B) of this paragraph for such taxable year; and

(ii) In lieu of the reduction provided in section 122(c), such reduction shall be in the amount by which the excess profits net income computed with the exceptions and limitations provided in section 122(d) (1), (2), (3), and (4) and computed without regard to subparagraph (D), without regard to any credit for dividends received, and without regard to any credit for interest received provided in section 26(a) exceeds the excess profits net income (computed without the net operating loss deduction).

(3) TAXABLE YEAR LESS THAN TWELVE MONTHS.—

(A) General Rule.—If the taxable year is a period of less than twelve months the excess profits net income for such taxable year (referred to in this paragraph as the "short taxable year") shall be placed on an annual basis by multiplying the amount thereof by the number of days in the twelve months ending with the close of the short taxable year and dividing by the number of days in the short taxable year. The tax shall be such part of the tax computed on such annual basis as the number of days in the short taxable year is of the number of days in the twelve months ending with the close of the short taxable year.

(B) Exception.—If the taxpayer establishes its adjusted excess profits net income for the period of twelve months beginning with the first day of the short taxable year, computed as if such twelve-month period were a taxable year, under the law

applicable to the short taxable year, and using the credits applicable in determining the adjusted excess profits net income for such short taxable year, then the tax for the short taxable year shall be reduced to an amount which is such part of the tax computed on such adjusted excess profits net income so established as the excess profits net income for the short taxable year is of the excess profits net income for such twelve-month period. The taxpayer (other than a taxpayer to which the next sentence applies) shall compute the tax and file its return without the application of this subparagraph. If, prior to one year from the date of the beginning of the short taxable year, the taxpayer has disposed of substantially all its assets, in lieu of the twelve-month period provided in the preceding provisions of this subparagraph, the twelve-month period ending with the close of the short taxable year shall be used. For the purposes of this subparagraph, the excess profits net income for the short taxable year shall not be placed on an annual basis as provided in subparagraph (A), and the excess profits net income for the twelve-month period used shall in no case be considered less than the excess profits net income for the short taxable year. The benefits of this subparagraph shall not be allowed unless the taxpayer, at such time as regulations prescribed hereunder require, makes application therefor in accordance with such regulations, and such application, in case the return was filed without regard to this subparagraph, shall be considered a claim for credit or refund. The Commissioner, with the approval of the Secretary, shall prescribe such regulations as he may deem necessary for the application of this subparagraph.

SEC. 35.711(a)-1 EXCESS PROFITS NET INCOME FOR THE TAXABLE YEAR.—Two methods are provided for determining the excess profits net income for the taxable year. One method, that provided by section 711(a)(1), is to be used if the excess profits credit is computed under section 713, which credit is referred to in these regulations as the income credit. The other method, that provided by section 711(a)(2), is to be used if the excess profits credit is computed under section 714, which credit is referred to in these regulations as the invested capital credit. As to corporations entitled to use the excess profits credit based on income or the excess profits credit based on invested capital, whichever credit results in the lesser excess profits tax, and corporations required to use the excess profits credit based on invested capital, see section 712. Under either method, the excess profits net income is computed in the same manner as the normal-tax net income but with adjustments in certain items of income, deductions, and credits which otherwise would be used in computing normal-tax net income as defined in section 13(a)(2). Adjustments in items of income, deductions, and credits are to be made as provided in section 711(a)(1) or section 711(a)(2), whichever is applicable. Adjustments are also to be made in deductions which, in computing normal-tax net income, are limited by other items of

deductions, or by items of income (for example, the deduction for capital losses under section 117(d)(1)), or by net income (for example, the deduction for corporate charitable contributions under section 23(q)), or by the net income from property (for example, the deduction for discovery or percentage depletion under section 114(b)(2), (3), and (4)), the limitation upon such deductions being determined for purposes of computing excess profits net income with reference to such items of income, or deductions, or net income, or the net income from property as adjusted under section 711(a)(1) or section 711(a)(2), whichever is applicable. If normal-tax net income is first determined (except for the credit for adjusted excess profits net income provided in section 26(e)), for convenience in computing excess profits net income, where the limitations described in this paragraph are not involved, the adjustments may be made by additions and subtractions from the amount of such normal-tax net income, instead of by completely recomputing normal-tax net income.

SEC. 35.711(a)-2 EXCESS PROFITS NET INCOME IF INCOME CREDIT IS USED.—If the excess profits credit for the taxable year is computed under section 713, the excess profits net income for such year is the normal-tax net income as recomputed after making the adjustments provided in section 711(a)(1).

For the purpose of making the adjustment under section 711(a)(1)(B) for certain capital gains and losses, gains and losses from sales or exchanges of capital assets are determined under the definitions and in the manner provided under chapter 1. In recomputing normal-tax net income for the purpose of determining excess profits net income for the taxable year, capital gains and losses from the sale or exchange of capital assets held for more than six months are to be excluded and the excess of losses from sales or exchanges of capital assets held for not more than six months over gains from the sale or exchange of capital assets held for not more than six months is also to be excluded. For example, a corporation has \$4,000 in gains from sales of capital assets held for more than six months, \$3,000 in gains from sales of capital assets held not more than six months, and \$6,000 in losses from sales of capital assets held not more than six months. The \$4,000 long-term capital gains are to be excluded for excess profits tax purposes. Accordingly, the deduction for short-term capital losses for excess profits tax purposes is limited to \$3,000, the amount of the short-term capital gains. Since capital losses are allowed as a deduction only to the extent of capital gains (section 117(d)(1)), and since both long-term gains and losses are excluded for excess profits tax purposes, short-term losses are allowed only to the extent of the remaining short-term gains.

In making the adjustment provided in section 711(a)(1)(C), the term "indebtedness" as used therein includes indebtedness assumed by the taxpayer even though such indebtedness is evidenced, so far as the taxpayer is concerned, only by a contract (which has been outstanding for more than six months) with the person whose liabilities have been assumed. Also, a renewal obligation is to be considered to be outstanding for more than six months if the original obligations and the renewal obligations taken together have been outstanding for a total of more than six months. The term "other evidence of indebtedness" does not include open account book entries.

The refunds of Agricultural Adjustment Act taxes referred to in section 711(a)(1)(D) include only those made under Title VII of the Revenue Act of 1936 and refunds made to processors under section 15(a) of the Agricultural Adjustment Act as reenacted by section 601 of the Revenue Act of 1936.

The provisions of section 711(a)(1)(E), relating to recoveries of bad debts, are not applicable in the case of a taxpayer using the reserve method of treating bad debts as provided in sections 29.23(k)-1 and 29.23(k)-5 of Regulations 111.

Deductions which are limited by items of income or deductions, or by the net income or the net income from property are to be computed upon the basis of such items or such net income or net income from property as adjusted under section 711(a)(1) in recomputing normal-tax net income for the purpose of determining the amount of excess profits net income.

Section 711(a)(1)(J) provides for recomputation of the net operating loss deduction in computing excess profits net income under the income credit. The various steps in computing the deduction are to be taken in the same manner and for the same years as are provided in section 122 and in the regulations thereunder, except as prescribed in the rules set forth in section 711(a)(1)(J). The exceptions prescribed by section 711(a)(1)(J) require that in the computation of the net operating loss for any taxable year under section 122(a) and in the computation of the net income for any taxable year under section 122(b) no deduction shall be allowed for any excess profits tax and, if the excess profits credit was computed under the invested capital method for the taxable year in which the loss was sustained or the net income arose, the deduction for interest for such taxable year shall be reduced by the amount of any reduction for such taxable year prescribed under section 711(a)(2)(B). Furthermore, in lieu of the reduction prescribed in section 122(c) for converting the aggregate of the net operating loss carry-overs and carry-backs to the taxable year into the net operating loss deduction, the reduction for such purpose shall be the amount by which

the excess profits net income for the taxable year in which the deduction is allowable, computed with the exceptions and limitations specified in section 122(d) (1), (2), (3), and (4) and computed without regard to section 711(a) (1) (B) (excluding long-term capital gains and losses), without regard to any credit for dividends received, and without regard to any credit for interest received provided in section 26(a) exceeds the excess profits net income for such taxable year (computed without any net operating loss deduction). The net operating loss deduction so computed with the adjustments prescribed by section 711(a) (1) (J) is deducted in computing normal-tax net income to determine excess profits net income, in lieu of the net operating loss deduction otherwise prescribed in sections 23(s) and 122.

The computation of net operating loss, net operating loss carry-back and carry-over, and the net operating loss deduction for purposes of excess profits net income is illustrated by the following example:

Example. The X Corporation makes its income tax returns on a calendar year basis and under the accrual method of accounting. Its only net operating loss for the years 1939-1946, inclusive, occurs in 1944. Under section 122(b), the net operating loss for 1944 first is to be carried back to 1942 and the balance of such carry-back, if any, computed as provided in sections 122(b) and 711(a) (1) (J) (i) is to be carried back to 1943. For 1942, 1943, and 1944, the facts with respect to the X Corporation are as follows:

	1942	1943	1944
(a) Tax exempt interest from State bonds.....	\$1,000	\$1,000	\$1,000
(b) Dividends received.....	10,000	10,000	10,000
(c) Long-term capital gain.....	2,500	3,900	
(d) Interest from United States obligations.....	2,000	2,000	2,000
(e) Other items of gross income.....	200,000	300,000	20,000
(f) Total taxable gross income (sum of items (b), (c), (d), and (e)).....	214,500	315,000	32,000
(g) Deductions (other than net operating loss deduction; no capital losses).....	154,500	177,000	115,000
(h) Net income or (loss).....	60,000	138,000	(83,000)
(i) Credit for interest from United States obligations.....	2,000	2,000	2,000
(j) Adjusted net income.....	58,000	136,000	(85,000)
(k) Credit for dividends received (85 percent of amount in item (b) but not more than 85 percent of adjusted net income).....	8,500	8,500	
(l) Normal-tax net income (computed without net operating loss deduction and without credit for income subject to excess profits tax).....	49,500	127,500	(85,000)

In order to determine the net operating loss for 1944 there must be added to the total gross taxable income of \$32,000, the \$1,000 of tax exempt interest, as provided in section 122(d) (2). Accordingly, the net operating loss for 1944 is \$82,000, the excess of \$115,000 (item (g)) over \$33,000 (the sum of item (f), \$32,000, and item (a), \$1,000). The net operating loss deduction for 1942 is the amount of this carry-back, reduced as provided in section 711(a) (1) (J) (ii). This reduction is the excess of the amount of excess profits net income for 1942

with certain adjustments provided in section 711(a)(1)(J)(ii) over the amount of excess profits net income for 1942 (computed without the net operating loss deduction). The amount of excess profits net income for 1942 computed without the net operating loss deduction is \$45,500, computed as follows:

Normal-tax net income for 1942, as previously determined.....	\$49,500
Less:	
Long-term capital gain.....	\$2,500
Credit for balance of dividends received.....	1,500
	<u>4,000</u>

Excess profits net income (computed without net operating loss deduction)	45,500
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The amount of excess profits net income computed with the adjustment provided in section 711(a)(1)(J)(ii) from which the \$45,500 is to be deducted is \$61,000, computed as follows:

Excess profits net income (computed without net operating loss deduction in accordance with section 122(d)(3)).....	\$45,500
Plus:	
Tax exempt interest.....	1,000
Long-term capital gain.....	2,500
Amount of credit for dividends received.....	10,000
Amount of credit for interest received.....	2,000
	<u>61,000</u>

Since \$61,000 exceeds \$45,500 by \$15,500, the net operating loss carry-back of \$82,000 to 1942 is to be reduced by \$15,500, leaving a net operating loss deduction of \$66,500 for the purpose of determining excess profits net income for 1942.

In this example, the net operating loss carry-back from 1944 to 1943 is the excess of the carry-back, \$82,000, over the net income for 1942 computed under sections 122(b)(1) and 711(a)(1)(J)(i) as follows:

Net income for 1942, as previously determined.....	\$60,000
Plus:	
Tax exempt interest.....	1,000
	<u>61,000</u>

It will be noted that the excess profits tax for 1942 is not allowed under section 711(a)(1)(J)(i) as a deduction in computing the above amount (\$61,000) although it is allowed for income tax purposes as a deduction in computing net operating loss, as provided in section 122(d)(6). The net operating loss carry-back to 1943 for purposes of excess profits tax therefore is \$21,000 (the excess of \$82,000 over \$61,000). The net operating loss deduction for 1943 for purposes of excess profits net income for 1943 is the amount of \$21,000 reduced

as provided in section 711(a)(1)(J)(ii). The amount of this reduction is computed in the same manner as the corresponding reduction was previously computed for 1942. That is, the excess profits net income for 1943, computed without net operating loss deduction, is \$123,000, computed as follows:

Normal-tax net income, as previously determined.....	\$127,500	
Less:		
Long-term capital gain.....	\$3,000	
Credit for balance of dividends received.....	1,500	
		<u>4,500</u>
Excess profits net income (computed without net operating loss deduction)		123,000

The amount which is in excess of this amount of \$123,000 is \$139,000, computed with the adjustments provided in section 711(a)(1)(J)(ii) as follows:

Excess profits net income (computed without net operating loss deduction in accordance with section 122(d)(3))	\$123,000	
Plus:		
Tax exempt interest.....	1,000	
Long-term capital gain.....	3,000	
Amount of credit for dividends received.....	10,000	
Amount of credit for interest received.....	2,000	
		<u>139,000</u>

The excess of \$139,000 over \$123,000 is \$16,000. Since the net operating loss carry-back to 1943 (\$21,000) must be reduced by this amount (\$16,000) in determining the deduction for 1943, the net operating loss deduction allowable for the purpose of determining excess profits net income for 1943 is \$5,000.

In this example, no net operating loss carry-over from 1944 is allowable to 1945 or 1946. The net operating loss for 1944, \$82,000, does not exceed the sum of the net income for 1942 and 1943 when the net income for 1942 and 1943 is computed under section 122(b)(2) and section 711(a)(1)(J)(ii). The net income for 1942 as previously determined under such sections is \$61,000. The net income for 1943 computed under such sections is \$139,000 computed as follows:

Net income for 1943 as previously determined.....	\$138,000	
Plus:		
Tax exempt interest.....	1,000	
		<u>139,000</u>

For a deduction from normal-tax net income in the case of life insurance companies for the purpose of determining excess profits net income, see section 711(a)(1)(H). For exclusion of nontaxable income

from exempt excess output of mines and timber blocks and nontaxable bonus income provided in section 735 in the case of a producer of minerals, or a producer of logs or lumber from a timber block, as defined in section 735, see section 711(a)(1)(I).

The computation of the excess profits net income in cases where the income credit is used may be illustrated by the following example:

Example. The facts with respect to the X Corporation for the calendar year 1942 are as follows:

(1) The normal-tax net income of the corporation, computed without regard to the credit provided in section 26(e) for income subject to the excess profits tax, is \$400,000.

(2) The corporation has gains of \$100,000 and losses of \$75,000 from sales and exchanges of capital assets held for more than six months. It has no gains or losses from sales or exchanges of capital assets held for not more than six months.

(3) On January 1, 1932, the corporation issued at a premium of \$40,000 bonds with a total face value of \$800,000, maturing December 31, 1951. On January 1, 1942, the corporation purchases one-half of the amount of the bonds for \$390,000. For the years 1932 to 1941, inclusive, it had returned \$10,000 as income with respect to the premium on the bonds it so purchased. The corporation did not comply with the provisions of section 22(b)(9) for excluding from gross income the income from the retirement of its bonds.

(4) The corporation derives income in the amount of \$400 attributable to refund of tax paid under the Agricultural Adjustment Act of 1933, as amended, and interest upon such refund.

(5) For the calendar year 1935, the corporation deducted \$10,000 as a bad debt. The deduction of all bad debts for the calendar year 1935 resulted in a reduction of its tax for that year. During the calendar year 1942, it recovers \$5,000 with respect to such debt.

(6) The corporation receives as dividends: \$100,000 of the class with respect to which a credit is allowed by section 26(b), \$20,000 from a China Trade Act corporation, and \$20,000 from a foreign corporation which is not a foreign personal holding company.

If the income credit is used, the excess profits net income of the corporation for the calendar year 1942 is \$314,600, computed as follows:

Normal-tax net income (computed without regard to the credit provided by section 26(e) for income subject to the excess profits tax)	\$400,000
Plus:	
Losses from the sale or exchange of capital assets held for more than six months	75,000
	<hr/>
	475,000

Less:

Gains from the sale or exchange of capital assets held for more than six months-----	\$100,000
Income from retirement of bonds-----	20,000
Income from refunds of Agricultural Adjustment Act taxes and interest thereon-----	400
Income from recovery of bad debts-----	5,000
Additional dividends received credit (100 per cent of total dividends of \$120,000 received from domestic corporations including the China Trade Act Corporations, less credit of \$85,000 already allowed by section 26(b) for dividends received, or \$120,000 minus \$85,000-----	35,000
	<hr/> \$160,400
Excess profits net income-----	314,600

. It is to be observed that no adjustment under section 711(a)(1)(F) is required to be made for the \$20,000 dividends received from the foreign corporation.

SEC. 35.711(a)-3 EXCESS PROFITS NET INCOME IF INVESTED CAPITAL CREDIT IS USED.—If the excess profits credit for the taxable year is computed under section 714, then the excess profits net income for such year is the normal-tax net income recomputed with the adjustments provided in section 711(a)(2). Under section 711(a)(2)(A), there must be eliminated in computing normal-tax net income the credit allowed under Chapter 1 for dividends received on stock which is not a capital asset as defined in section 117, such as stock held primarily for sale to customers by a dealer in securities. Otherwise the adjustments are the same as the adjustments provided in section 711(a)(1) except that the following additional adjustments are required to be made:

(a) There shall be added to the normal-tax net income:

(1) An amount equal to 50 per cent of the deduction for interest on the indebtedness included in the daily amounts of borrowed capital (determined under section 719(a)); and

(2) An amount equal to the amount of interest on obligations held during the taxable year which are described in section 22(b)(4), any part of the interest from which is excludible from gross income or allowable as a credit against net income, if the corporation has elected under section 720(d) to treat such interest as taxable for excess profits tax purposes. As used in paragraph (2), the term "interest" includes, in the case of obligations issued at a discount, so much of such discount as (for purposes of determining gain or loss upon sale or other disposition) is treated as interest in the hands of the taxpayer for the taxable year. If a taxpayer in its return has made the election under section 720(d), the amount of interest on obligations held during the taxable year which are described in section 22(b)(4) shall be reduced by the amount, if any, of the amortizable bond premium

under section 125 attributable to such obligations, and only the amount of interest so reduced shall be added to normal-tax net income.

(b) There shall be subtracted from the normal-tax net income the amount of dividends received from foreign corporations on stock which is a capital asset, except dividends (actual or constructive) on stock of foreign personal-holding companies.

The computation of the excess profits net income in cases where the invested capital credit is used may be illustrated by the following example:

Example. The facts present in the example in section 35.711(a)-2 with respect to the X Corporation are also present with respect to the Y Corporation, and in addition the following facts are present with respect to the latter corporation:

(a) During the calendar year 1942 the corporation pays interest amounting to \$48,000 on the bonds referred to in (3) of that example.

(b) Throughout the entire calendar year 1942 the corporation owns \$100,000 of Treasury bonds 1944-54 and \$100,000 of bonds issued by a State. Neither the Treasury bonds nor the State bonds were purchased at a premium. It derives income for the year 1942 from interest on such bonds amounting to \$6,000. The corporation elects under section 720(d) to increase its normal-tax net income for excess profits tax purposes for the year 1942 by an amount equal to the amount of interest on all obligations held during that year which are described in section 22(b)(4).

(c) The corporation held as a capital asset the stock on which the dividends were received.

If the invested capital credit is used, the excess profits net income of the corporation for the calendar year 1942 is \$324,600, computed as follows:

Normal-tax net income (computed without regard to the credit provided by section 26(e) for income subject to the excess profits tax) ----- \$400,000
Plus:

Losses from the sale or exchange of capital assets held for more than six months-----	\$75,000	
50 per cent of interest on indebtedness included in borrowed capital-----	24,000	
Interest on Government and State obligations-----	6,000	
		105,000
		<hr/> 505,000

Less:

Gains from the sale or exchange of capital assets held for more than six months-----	\$100,000
Income from retirement of bonds-----	20,000
Income from refunds of Agricultural Adjustment Act taxes and interest thereon-----	400

Less—Continued.

Income from recovery of bad debts.....	\$5, 000
Additional dividends received credit (\$140,000 dividends received from both domestic and foreign corporations less credit of \$85,000 already allowed by section 26(b) for dividends received).....	55, 000
	<hr/> \$180, 400

Excess profits net income under section 711(a) (2)..... 324, 600

SEC. 35.711(a)-4 TAX FOR PERIOD OF LESS THAN 12 MONTHS.—(a) *Methods of computing tax for short taxable year; allowance.*—Section 711(a) (3) provides rules, under a general rule and under an exception to such rule, which are applicable to short excess profits tax taxable years for the purpose of determining 12 months' experience and computing the tax for such years. A short taxable year is any taxable period of less than 12 months. If the period from the date of incorporation of a corporation to the end of its first accounting period, or the period from the beginning of its last accounting period to the date it ceases operations and is dissolved, retaining no assets, is a period of less than 12 months, such period is a short taxable year. In every case of a short taxable year, whether of a type resulting from a change of accounting period or of a type described in the preceding sentence, the excess profits net income for a period of 12 months used for the purpose of computing the tax under this section shall be used for all other purposes under this subchapter (except as otherwise expressly provided) as the excess profits net income of the taxpayer for the short taxable year. The tax imposed by section 710(a) (1) (A) for the short taxable year shall be computed under subsection (b) of this section, except as otherwise provided in subsection (c) of this section. The tax under section 710(a) (1) (B) for a taxable year of less than 12 months is determined on the basis of the actual normal tax and surtax for the taxable year and on the basis of the corporation surtax net income computed for the period for which return was made without placing the net income on an annual basis and computed without regard to the credit provided in section 26(e) for income subject to excess profits tax.

(b) *General rule.*—Section 711(a) (3) (A) provides that the excess profits net income for a short taxable year shall be placed on an annual basis by multiplying the amount thereof by the number of days in the 12 months ending with the close of the short taxable year and dividing by the number of days in the short taxable year. A tentative tax shall then be computed as though the excess profits net income were the amount so ascertained under the preceding sentence. The actual tax for the short taxable year shall be an amount which bears the same ratio to such tentative tax as the number of days in the short

taxable year bears to the total number of days in the 12 months ending with the close of the taxable year.

(c) *Exception; tax for short period determined by actual 12-month adjusted excess profits net income.*—If the taxpayer applies to the Commissioner in the manner provided in subsection (d) of this section to have its tax computed under the provisions of section 711(a) (3) (B), and if the taxpayer establishes the amount of its adjusted excess profits net income, computed for the 12-month period hereinafter described and under the rules hereinafter prescribed, then section 711(a) (3) (B) provides that the tax for the short taxable year shall be reduced to an amount which is such part of the tax computed on the basis of the adjusted excess profits net income which the taxpayer has established for such 12-month period as the excess profits net income for the short taxable year is of the excess profits net income for such 12-month period. If such amount, however, is greater than the tax computed under subsection (b) of this section, the tax for the short taxable year is the tax computed under subsection (b). The 12-month period referred to above is the 12-month period beginning with the first day of the short taxable year, except that if the taxpayer has disposed of substantially all its assets prior to the end of such 12-month period, then it is the 12-month period ending with the last day of the short taxable year. If a corporation ceases business and distributes so much of the assets used in its business that it cannot resume its customary operations with the remaining assets, it has disposed of substantially all of its assets.

In computing the tax under section 711(a) (3) (B), the excess profits net income for the short taxable year is not placed on an annual basis as provided in section 711(a) (3) (A). The adjusted excess profits net income for the 12-month period is computed under the same provisions of law as are applicable to the short taxable year, with the use of the credits applicable in determining the adjusted excess profits net income for such short taxable year (as if this section were not applicable), and is computed as if the 12-month period were an actual accounting period of the taxpayer. All items which fall in such 12-month period must be included even if they are extraordinary in amount or of an unusual nature. The adjustments provided in section 711(a) (1) and (2) under the law applicable to such short taxable year shall be made upon the basis of the normal-tax net income for such 12-month period. The apportionment of items to such 12-month period shall be made in accordance with the method and principles applicable under section 29.47-2(b) of Regulations 111. The excess profits net income for the 12-month period used shall in no case be considered less than the actual excess profits net income for the short taxable year.

(d) Application to compute tax under section 711 (a) (3) (B).—

A taxpayer desiring the benefit of section 711(a)(3)(B) must file an application therefor. If at the time the return for the short taxable year is filed the taxpayer is able to determine that the 12-month period ending with the close of the short taxable year will be used in the computations under section 711(a)(3)(B), then the tax on the return for the short taxable year may be determined under the provisions of section 711(a)(3)(B). In such a case, an excess profits tax return form covering the 12-month period shall be attached to the return as a part thereof, and the return will then be considered the application for the benefits of section 711(a)(3)(B) required by that section. In all other cases, the taxpayer shall file its return and compute its tax as provided in subsection (b) of this section, and the application for the benefit of section 711(a)(3)(B) shall be made in the form of a claim for credit or refund if the tax computed under section 711(a)(3)(A) has been paid, or, if the tax computed under section 711(a)(3)(A) has not been paid, the application shall consist of a notice to the Commissioner setting forth the facts involved together with an excess profits tax return form covering the 12-month period used. The claim or other application for the benefit of section 711(a)(3)(B) shall set forth the computation of the adjusted excess profits net income and the tax thereon for the 12-month period and, if credit or refund is sought for taxes paid before the application for the benefit of section 711(a)(3)(B) is filed, the claim must be filed not later than June 15, 1943, or the time prescribed for filing the return for the first taxable year (or for the period which would be its taxable year if it continued in existence) ending with or after the twelfth month after the beginning of the short taxable year, whichever date is later. For example, the taxpayer changes its accounting period from the calendar year basis to the fiscal year basis ending September 30, and files a return for the period from January 1, 1942, to September 30, 1942. At the time it files its return, it pays the tax computed thereon under the provisions of section 711(a)(3)(A). Its claim for credit or refund of the overpayment which would result from the application of section 711(a)(3)(B) must be filed not later than the time prescribed for filing its return for the first taxable year which ends on or after the last day of December, 1942, the twelfth month after the beginning of the short taxable year. In this case, the taxpayer must file its claim for credit or refund not later than December 15, 1943, the time prescribed for filing the return for its fiscal year ending September 30, 1943. However, if it obtains an extension of time for filing the return for such fiscal year, it may file its claim during the period of such extension. If the Commissioner determines that the taxpayer has established the amount of the adjusted excess profits

net income for the 12-month period; any excess of the tax paid for the short taxable year over the tax computed under section 711(a)(3)(B) will be credited or refunded to the taxpayer in the same manner as in the case of any other overpayment. An application for the benefit of section 711(a)(3)(B), other than a claim for credit or refund, made in any case in which the tax liability computed under section 711(a)(3)(A) has not been paid, may be filed at any time before the tax liability for the taxable year is finally determined. Such application does not constitute a claim for credit, refund, or abatement. If credit or refund is sought for taxes paid after such application is filed, a claim therefor on Form 843 should be filed after such payment and within the period prescribed in section 322.

[SEC. 711. EXCESS PROFITS NET INCOME (ADDED BY SEC. 201, SECOND REV. ACT 1940; AMENDED BY SECS. 3 AND 12(b), EXCESS PROFITS TAX AMENDMENTS 1941, BY SEC. 202 (c) AND (d), REV. ACT 1941, AND BY SECS 205 (b) AND (c), 206, 207, 208, 209 (a) AND (b), 210, 211, AND 213, REV. ACT 1942).]

* * * * *

(b) TAXABLE YEARS IN BASE PERIOD.—

(1) GENERAL RULE AND ADJUSTMENTS.—The excess profits net income for any taxable year subject to the Revenue Act of 1936 shall be the normal-tax net income, as defined in section 13(a) of such Act; and for any other taxable year beginning after December 31, 1937, and before January 1, 1940, shall be the special-class net income, as defined in section 14(a) of the applicable revenue law. In either case the following adjustments shall be made (for additional adjustments in case of certain reorganizations, see section 742(e)):

(A) [Not applicable to taxable years under these regulations (section 202(c)(2), Rev. Act 1941).]

(B) Gains and Losses from Sales or Exchanges of Capital Assets.—There shall be excluded gains and losses from sales or exchanges of capital assets held for more than 6 months.

(C) Income From Retirement or Discharge of Bonds, and So Forth.—There shall be excluded in the case of any taxpayer, income derived from the retirement or discharge by the taxpayer of any bond, debenture, note, or certificate or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for more than 6 months, including, in case the issuance was at a premium, the amount includible in income for such year solely because of such retirement or discharge;

(D) Deductions on Account of Retirement or Discharge of Bonds, and So Forth.—If during the taxable year the taxpayer retires or discharges any bond, debenture, note, or certificate or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for more than eighteen months, the following deductions for such taxable year shall not be allowed:

(1) The deduction allowable under section 23(a) for expenses paid or incurred in connection with such retirement or discharge;

(ii) The deduction for losses allowable by reason of such retirement or discharge; and

(iii) In case the issuance was at a discount, the amount deductible for such year solely because of such retirement or discharge;

(E) Casualty, Demolition, and Similar Losses.—Deductions under section 23(f) for losses arising from fires, storms, shipwreck, or other casualty, or from theft, or arising from the demolition, abandonment, or loss of useful value of property, not compensated for by insurance or otherwise, shall not be allowed;

(F) Repayment of Processing Tax to Vendees.—The deduction under section 23(a), for any taxable year, for expenses shall be decreased by an amount which bears the same ratio to the amount deductible on account of any repayment or credit by the corporation to its vendee of any amount attributable to any tax under the Agricultural Adjustment Act of 1933, as amended, as the excess of the aggregate of the amounts so deductible in the base period over the aggregate of the amounts attributable to taxes under such Act collected from its vendees which were includible in the corporation's gross income in the base period and which were not paid, bears to the aggregate of the amounts so deductible in the base period;

(G) Dividends Received.—The credit for dividends received shall apply, without limitation, to dividends on stock of domestic corporations;

(H) Payment of Judgments, and So Forth.—Deductions attributable to any claim, award, judgment, or decree against the taxpayer, or interest on any of the foregoing, if abnormal for the taxpayer, shall not be allowed, and if normal for the taxpayer, but in excess of 125 per centum of the average amount of such deductions in the four previous taxable years, shall be disallowed in an amount equal to such excess;

(I) Intangible Drilling and Development Costs.—Deductions attributable to intangible drilling and development costs paid or incurred in or for the drilling of wells or the preparation of wells for the production of oil or gas, and for development costs in the case of mines, if abnormal for the taxpayer, shall not be allowed, and if normal for the taxpayer, but in excess of 125 per centum of the average amount of such deductions in the four previous taxable years, shall be disallowed in an amount equal to such excess; and

(J) Abnormal Deductions.—Under regulations prescribed by the Commissioner, with the approval of the Secretary, for the determination, for the purposes of this subparagraph, of the classification of deductions—

(i) Deductions of any class shall not be allowed if deductions of such class were abnormal for the taxpayer, and

(ii) If the class of deductions was normal for the taxpayer, but the deductions of such class were in excess of 125 per centum of the average amount of deductions of such

class for the four previous taxable years, they shall be disallowed in an amount equal to such excess.

(K) Rules for Application of Subparagraphs (H), (I), and (J).—For the purposes of subparagraphs (H), (I), and (J)—

(i) If the taxpayer was not in existence for four previous taxable years, then such average amount specified in such subparagraphs shall be determined for the previous taxable years it was in existence and the succeeding taxable years which begin before the beginning of the taxpayer's second taxable year under this subchapter. If the number of such succeeding years is greater than the number necessary to obtain an aggregate of four taxable years there shall be omitted so many of such succeeding years, beginning with the last, as are necessary to reduce the aggregate to four.

(ii) Deductions shall not be disallowed under such subparagraphs unless the taxpayer establishes that the abnormality or excess is not a consequence of an increase in the gross income of the taxpayer in its base period or a decrease in the amount of some other deduction in its base period, and is not a consequence of a change at any time in the type, manner of operation, size, or condition of the business engaged in by the taxpayer.

(iii) The amount of deductions of any class to be disallowed under such subparagraphs with respect to any taxable year shall not exceed the amount by which the deductions of such class for such taxable year exceed the deductions of such class for the taxable year for which the tax under this subchapter is being computed.

(2) CAPITAL GAINS AND LOSSES.—For the purposes of this subsection the normal-tax net income and the special-class net income referred to in paragraph (1) shall be computed as if section 23(g) (2), section 23(k) (2), and section 117 were part of the revenue law applicable to the taxable year the excess profits net income of which is being computed, with the exception that the capital loss carry-over provided in subsection (e) (1) of section 117 shall be applicable to net capital losses for taxable years beginning after December 31, 1934. Such exception shall not apply for the purposes of computing the tax under this subchapter for any taxable year beginning before January 1, 1943.

SEC. 35.711(b)-1 COMPUTATION OF EXCESS PROFITS NET INCOME FOR TAXABLE YEARS IN BASE PERIOD.—If the excess profits credit for the taxable year is computed under section 713, it is necessary to compute the excess profits net income for each taxable year of the base period. The taxable years in the base period are those beginning after December 31, 1935, and before January 1, 1940. For a taxable year beginning after December 31, 1935, and before January 1, 1938, the starting point in the determination of the excess profits net income is the normal-tax net income, as defined in section 13(a) of the Revenue Act of 1936. For a taxable year beginning after December 31, 1937, the starting point is the special-class net income, as defined in section 14(a) of the Revenue Act of 1938 and the Internal Revenue Code.

The normal-tax net income or the special-class net income, as the case may be, is to be adjusted first as required by section 711(b) (2) and then as required by section 711(b)(1).

The adjustments required by sections 711(b) (2) and 711(b) (1) (B) may be illustrated by the following example:

Example. The normal tax net income of the X Corporation for the calendar year 1936 is \$50,000 and its special class net income for the calendar year 1939 is \$200,000. In December, 1935, the corporation purchased shares of the stock and bonds of other corporations for a total purchase price of \$25,000. The corporations were never included in a consolidated return. Such shares of stock and bonds were capital assets. They became worthless in 1936 and the bonds were charged off during that year. For 1936, the corporation had losses described in section 117(j) (relating to gains and losses from the sale, exchange, or involuntary conversion of certain property described in that section) which exceeded its gains described in that section by \$5,000. All of such gains and losses was derived from the sale of property of a character subject to the allowance for depreciation provided in section 23(1). For 1939, all gains and losses described in section 117(j) were again derived from the sale of property of a character subject to the allowance for depreciation provided in section 23(1), and such gains exceeded such losses by \$3,000. In addition to the foregoing gains and losses, the corporation had gains and losses as follows:

	1936	1939
Gains from the sale or exchange of capital assets held for not more than 6 months.....	\$12, 000	None
Losses from the sale or exchange of capital assets held for not more than 6 months (disregarding any carry-over).....	26, 000	None
Gains from the sale or exchange of capital assets held for more than 6 months.....	10, 000	\$25, 000
Losses from the sale or exchange of capital assets held for more than 6 months.....	30, 000	1, 000

For the purpose of computing the income credit applicable to the excess profits tax taxable year of the corporation beginning January 1, 1942, the adjustments required in computing the excess profits net income of the corporation for 1936 and 1939 are as follows:

1936

Normal-tax net income.....	\$50, 000
Adjustment under section 711(b) (2) :	
Add: Deductions for loss on worthless stock and bonds (\$25,000) and for capital net loss (\$2,000) (\$25,000 plus \$2,000 or \$27,000) ..	27, 000
	<hr/> 77, 000
Subtract: Excess of losses described in section 117(j) over gains described in that section.....	5, 000

Normal-tax net income adjusted as required by section 711(b)

(2) -----	\$72,000
(No adjustment is required under section 711(b) (1) (B) since losses from the sale or exchange of capital assets held for more than six months exceed gains from the sale or exchange of such assets, determined as follows:	
Losses from the sale or exchange of capital assets held for more than 6 months (\$25,000 with respect to the worthless stock and bonds and \$30,000 with respect to other long-term capital losses) -----	\$55,000
Gains from the sale or exchange of capital assets held for more than 6 months -----	10,000
Net long-term capital losses -----	45,000

The adjustments under section 711(b) (2) in effect excluded such gains and losses from gross income by allowing the deduction of the losses only to the extent of the gains included in gross income.)

Normal-tax net income adjusted as required by section 711(b) (2) and section 711(b) (1) (B)¹ ----- 72,000

1939

Special class net income ----- \$200,000

(No adjustment required under section 711(b) (2).)

Adjustments under section 711(b) (1) (B) :

Gains from the sale or exchange of capital assets held for more than 6 months (\$3,000 with respect to the excess of gains from the sale of depreciable property over the losses therefrom and \$25,000 with respect to other long-term capital gains) -----	\$28,000
Losses from the sale or exchange of capital assets held for more than 6 months -----	1,000

Deduct net long-term capital gain ----- 27,000

Special class net income adjusted as required by sections 711(b) (2) and 711(b) (1) (B) ----- 173,000

The following rules apply to the use of capital loss carry-overs to base period years when computing the income credit applicable to the excess profits tax taxable years indicated below :

(1) If the excess profits tax taxable year begins in 1942, the net short-term capital loss carry-over provided in section 117(e), prior to its amendment by the Revenue Act of 1942, shall be applicable to net short-term capital losses for taxable years beginning after December 31, 1934, and for the purpose of determining such carry-over capital

¹ Since losses from the sale or exchange of capital assets held for not more than six months exceed the gains from such sales or exchanges, such gains and losses do not enter into the adjustment except insofar as they are reflected in the \$2,000 deduction for net capital losses, allowed in computing normal tax net income, which is disallowed under section 711(b) (2).

gains and losses shall be determined as if the provisions of section 23 (g) (2) and (k) (2) and section 117 of the Code (other than section 117(e)), as amended by the Revenue Act of 1942 were applicable to all of such years. (See Regulations 103 and 111.)

(2) If the excess profits tax taxable year begins on or after January 1, 1943, the capital loss carry-over provided in section 117(e) (1), as amended by the Revenue Act of 1942, shall be applicable to net capital losses for taxable years beginning after December 31, 1934, and for the purpose of determining such carry-over capital gains and losses shall be determined as if the provisions of section 23 (g) (2) and (k) (2) and section 117 of the Code, as amended by the Revenue Act of 1942, were applicable to all of such years. (See Regulations 111.)

Section 117(e) (2), as added by the Revenue Act of 1942, has no application for the purposes of computing capital loss carry-overs to base period years.

No adjustment on account of income tax for any base period year shall be made in computing the excess profits tax for the taxable year.

For the purpose of the adjustment under section 711(b) (1) (C), the applicable number of months beyond which the obligation of the taxpayer must have been outstanding is six months. The applicable number of months beyond which the obligation of the taxpayer must have been outstanding for the purpose of the adjustment under section 711(b) (1) (D) is 18 months.

In making the adjustments provided in section 711(b) (1) (D), the deduction allowable for any premium paid on bonds when called for redemption shall be disallowed, but the deduction allowable for any discount amortized up to the date of retirement or discharge shall not be disallowed. Expenses incurred in issuing bonds which are amortized shall be treated in the same manner as discounts. The adjustments required by section 711(b) (1) (D) may be illustrated by the following example:

Example. The normal-tax net income of the M Corporation for the calendar year 1936 is \$75,000. On January 1, 1935, the corporation issued 1,200 non-serial bonds with a total face value of \$120,000 at a discount of \$14,400, maturing on December 31, 1954. On August 1, 1936, the corporation purchased one-sixth of the amount of the bonds for \$19,000. The deduction allowable under section 23(a) of the Revenue Act of 1936 for expenses paid in connection with such purchase amounted to \$1,200. The adjustments required by section 711(b) (1) (D) in computing the excess profits net income of the corporation for 1936 are as follows:

Normal-tax net income..... \$75,000
 Adjustment under section 711(b) (1) (D) :

Add:

(i) Deduction allowable for expenses in connection with retirement.....	\$1,200
(ii) Deduction for losses allowable by reason of retirement.....	None
(iii) Amount deductible because of retirement or discharge of bonds (\$1,210 computed as in Schedule below).....	1,210
	<hr/> 2,410

Normal-tax net income adjusted as required by section 711(b) (1) (D) -- 77,410

Schedule—

(a) Annual amortization on \$14,400 discount ($\$14,400 \div 20$).....	720
(b) Annual amortization of discount on block of bonds retired ($\$720 \div 6$).....	120
(c) Monthly amortization of discount on block of bonds retired ($120 \div 12$).....	10
(d) Amortized discount deductible on block of bonds retired on August 1, 1936 ($\$10 \times 19$).....	190
(e) Purchase price of bonds retired on August 1, 1936.....	19,000
(f) Issuing price of bonds retired on August 1, 1936 $\frac{1,200 \times \$88}{6}$	17,600
(g) Total amount of discount deductible on account of retirement of bonds on August 1, 1936 ($\$19,000 - \$17,600$).....	1,400
(h) Amount deductible because of retirement or discharge of bonds (item (g) less item (d), or $\$1,400 - \190).....	1,210

The adjustments required by section 711(b) (1) (F) may be illustrated by the following example:

Example. The normal-tax net income of the O Corporation for the calendar year 1936 is \$75,000. During that year the corporation collected from its vendees \$2,000 attributable to taxes under the Agricultural Adjustment Act of 1933, as amended. The \$2,000 was included in the gross income of the corporation for 1936 and the taxes to which such amount was attributable were not paid. During the years 1936 and 1937 the corporation repaid to its vendees \$6,000 and \$2,000, respectively, of amounts it had collected from them for 1936 and prior years attributable to such taxes. It made no such repayments during the years 1938 and 1939. The amount repaid to the vendees in 1936 is deductible from the corporation's gross income for that year. The adjustments required by section 711(b) (1) (F) in computing the excess profits net income of the corporation for 1936 are as follows:

Normal-tax net income..... \$75,000
 Adjustment under section 711(b) (1) (F) :

Add: The amount of \$4,500, computed as shown in the schedule below 4,500

Normal-tax net income adjusted as required by section 711(b) (1) (F)— \$79,500
Schedule—

(1) Amount deductible under section 23(a) for 1936 on account of repayment to vendees of amounts collected from vendees attributable to taxes under Agricultural Adjustment Act of 1933, as amended, which were not paid-----	\$6,000
(2) Aggregate amounts described in (1) deductible in the base period (\$6,000 plus \$2,000)-----	\$8,000
(3) Aggregate of amounts described in (1) collected from vendees and includible in gross income of corporation in base period---	\$2,000
(4) Excess of (2) over (3) (\$8,000 minus \$2,000)-----	\$6,000
(5) Ratio of (4) to (2)-----	6/8
(6) Amount of adjustment $\left(\frac{(4) \times (1)}{(2)} \text{ or } \frac{6}{8} \text{ of } \$6,000 \right)$ -----	\$4,500

In connection with the adjustments required to be made by section 711(b) (1) (H), (I), and (J), see section 35.711(b)-2.

SEC. 35.711(b)-2 ABNORMAL DEDUCTIONS IN BASE PERIOD.—Adjustments in the excess profits net income for a taxable year in the base period are required in order to disallow deductions of a class which is abnormal for the taxpayer, and to disallow the amount by which deductions of a class normal for the taxpayer exceed 125 percent of the average amount of deductions of such class for the four previous taxable years. If the taxpayer was not in existence for four previous taxable years, then the average amount of deductions of any class shall be determined for the previous taxable years during which it was in existence and the succeeding taxable years which begin before the beginning of the taxpayer's second excess profits tax taxable year. If the number of such succeeding years is greater than the number necessary to obtain an aggregate of four taxable years there shall be omitted so many of such succeeding years, beginning with the last, as are necessary to reduce the aggregate to four. For example, in the case of a corporation coming into existence on January 1, 1938, and making its income tax returns on the calendar year basis, the amount of deductions of any class which may be disallowed for the taxable year 1939 may be determined from the average of the deductions for the taxable years 1938 and 1940. The taxable year 1941 is the taxpayer's second excess profits tax taxable year and therefore may not be used.

A class of deductions is abnormal only if the taxpayer had no deductions of that class in the taxable years prescribed for determining average deductions.

The taxpayer must establish that the abnormality or excessiveness of the deduction is not a consequence of an increase in the gross income of the taxpayer in its base period or a decrease in the amount of some other deduction in its base period, and is not a consequence of a change at any time in the type, manner of operation, size, or condition

of the business engaged in by the taxpayer. For example, if in 1939 the deductions of an airplane manufacturer for wages were in excess of 125 percent of the average of such deductions for the four previous taxable years because of a training program for mechanics instituted by the corporation in 1939 to provide for an expansion in operations, no part of the deductions will be disallowed. If a corporation distributes its product through agents paid commissions on gross sales, and due to a rise in the price of the product, both the amount of gross income and the amount of deductions for commissions increased, any resulting abnormal amount of deductions for commissions will not be disallowed. If the X Gasoline Corporation in 1938 and all prior years deducted gasoline taxes paid by it as a business expense under section 23(a), but in 1939 included such taxes for that year in its deductions for taxes paid under section 23(c) so as to increase its deductions for taxes paid for 1939 to an amount in excess of 125 percent of its average deductions of the same class for the four previous taxable years, the abnormal amount of such deduction for 1939 will not be disallowed. As to advertising expenditures, the provisions of section 733 apply before any determinations are made under this section. See section 35.733-3.

In order for the deduction of any class to be disallowed, the deductions of such class for the taxable year in the base period must exceed the deductions of the same class for the taxable year for which the excess profits tax is being computed, and any amount which may be disallowed shall be no greater than the amount by which the deductions of such class for the base period taxable year exceed the deductions of the same class for the taxable year for which the excess profits tax is being computed. For example, if a corporation in the base period taxable year 1938 had a deduction of \$200,000 and its average of deductions of the same class for the four previous taxable years was \$100,000, the amount of \$75,000 (\$200,000 minus 125 percent of \$100,000) may be disallowed, but only if the deductions of this class in 1938 exceed by this or a greater amount the deductions of the same class in the taxable year for which the excess profits tax is being computed. If the tax is computed for 1942 and the deductions of this class for 1942 are \$100,000, the full \$75,000 is disallowed for the taxable year 1938. If for 1943 the deductions of this class are \$125,000, the full \$75,000 may again be disallowed for the taxable year 1938 in computing the excess profits tax for 1943. However, if for 1944 the deductions of this class are \$150,000, only \$50,000 will be disallowed for the taxable year 1938 in determining the excess profits credit based on income for use against the excess profits net income for 1944. If the excess profits tax taxable year is a taxable year of less than 12 months and the taxpayer places its excess profits

net income on an annual basis as provided in section 711(a)(3)(A) or establishes an adjusted excess profits net income for a 12-month period, which is used to compute the tax under section 711(a)(3)(B), the deductions of the class as determined upon such annual basis or under such adjusted excess profits net income for such 12-month period used shall be considered as deductions of the class for the excess profits tax taxable year. Thus, the corporation in the example just given may have changed its accounting period in 1943 from a calendar year to a fiscal year ending September 30. If, in such case, the corporation had \$125,000 of deductions of the class for the short taxable year January 1, 1943, through September 30, 1943, but computed its tax under section 711(a)(3)(B) and established an adjusted excess profits net income for the 12-month period January 1, 1943, through December 31, 1943, with \$175,000 of deductions of the class, only \$25,000 will be disallowed for the taxable year 1938 in determining the excess profits credit based on income for use against the excess profits net income for 1943.

(a) *Classification of deductions.*—Section 711(b)(1)(H) and (I) sets forth specific classes of deductions, the amount of which in any base period taxable year may be totally disallowed if abnormal for the taxpayer or disallowed to the extent of the excess over 125 percent of the average of such class if normal for the taxpayer. Section 711(b)(1)(J) permits the classification of other deductions in accordance with these regulations. In any case, the amount of deductions of any class which may be disallowed shall be determined in the manner previously set forth in this section.

Deductions attributable to any claim, award, judgment, or decree against the taxpayer, or interest on any of the foregoing are all of the same class. Therefore, in determining in the case of a deduction for a judgment, for example, whether the class of deductions is abnormal or whether the amount thereof for any taxable year is in excess of 125 percent of average deductions of the same class, account must be taken not only of the amount of deductions for judgments, if any, allowed in preceding taxable years, but also of any deductions arising out of claims, awards, and decrees, and interest thereon.

Deductions for intangible drilling and development costs paid or incurred in or for the drilling of wells or the preparation of wells for the production of oil or gas, and for development costs in the case of mines are all of the same class. Therefore, for the purpose of determining whether the deductions for one taxable year are abnormal or in excess of 125 percent of average deductions of this class, and for the purpose of determining the amount to be disallowed in such event, reference must be made to the deductions of the entire class, rather than to any particular deductible items included therein. Deductions attributable to the operation of wells or mines are not included in this class.

Deductions which do not fall within either of the classes specified in section 711(b)(1) (H) and (I) may be grouped by the taxpayer, subject to approval by the Commissioner on the examination of the taxpayer's return, in such other classes as are reasonable in a business of the type which the taxpayer conducts, and are appropriate in the light of the taxpayer's business experience and accounting practice. Such a classification will be applicable to all other taxable years considered at any time in adjusting deductions under this section, and must be consistent with any classification made by the taxpayer under the provisions of section 721 and section 722.

(b) *Statement required.*—If in computing its excess profits net income for a taxable year in the base period, the taxpayer claims the disallowance under section 711(b)(1) (H), (I), or (J) of any amount previously allowed as a deduction, there shall be submitted a full statement showing the computation of the amount to be disallowed, the prices and gross sales of the taxpayer's product, and the condition of the taxpayer's business which demonstrate that the disallowed amount is not a consequence of an increase in the gross income of the taxpayer in its base period or a decrease in the amount of some other deduction in its base period, and is not a consequence of a change at any time in the type, manner of operation, size, or condition of the business engaged in by the taxpayer. This statement shall be in duplicate and shall include the following: (1) the computation of the amount disallowed, showing the amount of the class of deductions in the base period taxable year for which any part of such amount is disallowed, the average amount of such class for the four preceding taxable years or for such taxable years as the taxpayer is required to use in determining this average amount, and the excess amount of deductions disallowed; (2) a description and the amount of each item included in such class of deductions for the taxable year for which such deductions are disallowed and for the taxable years in the test period, with the amount of each and a description thereof; (3) the amount of such class and the amount and description of each item in that class for the taxable year for which the excess profits tax is being computed; and (4) all other facts upon which the taxpayer relies.

SEC. 712. EXCESS PROFITS CREDIT—ALLOWANCE. [ADDED BY SEC. 201, SECOND REV. ACT 1940; AMENDED BY SEC. 13, EXCESS PROFITS TAX AMENDMENTS 1941, AND BY SECS. 212(a), 224(b), AND 228(e), REV. ACT 1942.]

(a) **DOMESTIC CORPORATIONS.**—In the case of a domestic corporation which was in existence before January 1, 1940, the excess profits credit for any taxable year shall be an amount computed under section 713 or section 714, whichever amount results in the lesser tax under this subchapter for the taxable year for which the tax under this sub-

chapter is being computed. In the case of all other domestic corporations the excess profits credit for any taxable year shall be an amount computed under section 714. (For allowance of excess profits credit in case of certain reorganizations of corporations, see section 741.)

(b) **FOREIGN CORPORATIONS.**—In the case of a foreign corporation engaged in trade or business within the United States, the first taxable year of which under this subchapter begins on any date in 1940, which was in existence on the day forty-eight months prior to such date and which at any time during each of the taxable years in such forty-eight months was engaged in trade or business within the United States, the excess profits credit for any taxable year shall be an amount computed under section 713 or section 714, whichever amount results in the lesser tax under this subchapter for the taxable year for which the tax under this subchapter is being computed. In the case of all other foreign corporations the excess profits credit for any taxable year shall be an amount computed under section 714.

(c) [Not applicable to taxable years under these regulations (section 224(b), Rev. Act 1942).]

(d) **SPECIAL RULE IN CONNECTION WITH CERTAIN REORGANIZATIONS.**—For the existence of taxpayer through component corporations, see section 740(f).

SEC. 35.712-1 EXCESS PROFITS CREDIT—ALLOWANCE.—(a) Two methods are provided for computing the excess profits credit: (1) The income method under which the credit is computed as provided in section 713, and (2) the invested capital method under which the credit is computed as provided in section 714.

(b) In the case of the following corporations, the excess profits credit shall be the credit based upon income, computed as provided in section 713, or the credit based on invested capital, computed as provided in section 714, whichever credit results in the lesser tax for the taxable year for which the tax is being computed:

(1) A domestic corporation which was actually in existence before January 1, 1940.

(2) A domestic corporation which was not actually in existence before January 1, 1940, but which, as an acquiring corporation within the meaning of section 740 of Supplement A, was constructively in existence before January 1, 1940. (For computation of excess profits credit based on income in the case of an acquiring corporation, see sections 740 to 744.)

(3) A foreign corporation (i) which is engaged in trade or business within the United States at any time during the taxable year; (ii) the first taxable year of which for the purposes of the excess profits tax begins on any day in 1940; (iii) which was in existence on the date 48 months prior to such date; and (iv) which, at any time during each of the taxable years in such 48 months, was engaged in trade or business within the United States. As to what constitutes being engaged in trade or business within the United States, see section 29.231-1 of Regulations 111.

(c) The following corporations are required to compute their credit under the invested capital method provided in section 714:

(1) A domestic corporation which is not an acquiring corporation within the meaning of section 740 of Supplement A and which was not actually in existence before January 1, 1940.

(2) A domestic corporation which is an acquiring corporation within the meaning of section 740 of Supplement A and which was not actually or constructively in existence before January 1, 1940.

(3) A foreign corporation which does not meet the requirements of subsection (b) (3) above.

However, in certain cases where the excess profits credit based on invested capital is an inadequate standard for determining excess profits, for allowance of an excess profits credit based on income, using a constructive average base period net income, see section 722(c) and section 35.722-4.

SEC. 713. EXCESS PROFITS CREDIT—BASED ON INCOME. [ADDED BY SEC. 201, SECOND REV. ACT 1940; AMENDED BY SEC. 4, EXCESS PROFITS TAX AMENDMENTS 1941, AND BY SECS. 214(a), 215, 216, AND 228(e), REV. ACT 1942.]

(a) **AMOUNT OF EXCESS PROFITS CREDIT.**—The excess profits credit for any taxable year, computed under this section, shall be—

(1) **DOMESTIC CORPORATIONS.**—In the case of a domestic corporation—

(A) 95 per centum of the average base period net income,

(B) Plus 8 per centum of the net capital addition as defined in subsection (g), or

(C) Minus 6 per centum of the net capital reduction as defined in subsection (g).

(2) **FOREIGN CORPORATIONS.**—In the case of a foreign corporation, 95 per centum of the average base period net income.

(b) **BASE PERIOD.**—

(1) **DEFINITION.**—As used in this section the term “base period”—

(A) If the corporation was in existence during the whole of the forty-eight months preceding the beginning of its first taxable year under this subchapter, means the period commencing with the beginning of its first taxable year beginning after December 31, 1935, and ending with the close of its last taxable year beginning before January 1, 1940; and

(B) In the case of a corporation which was in existence during only part of the forty-eight months preceding the beginning of its first taxable year under this subchapter, means the forty-eight months preceding the beginning of its first taxable year under this subchapter.

(2) **DIVISION INTO HALVES.**—For the purposes of subsections (d) and (f) the base period of the taxpayer shall be divided into halves, the first half to be composed of one-half the entire number of months in the base period and to begin with the beginning of the base period.

(c) **DEFICIT IN EXCESS PROFITS NET INCOME.**—For the purposes of this section the term “deficit in excess profits net income” with respect to any taxable year means the amount by which the deductions plus the credit for dividends received and the credit provided in section 26(a) (relating to interest on certain obligations of the United States and its instrumentalities) exceeded the gross income. For the purposes of this subsection in determining whether there was such an excess and in determining the amount thereof, the adjustments provided in section 711(b)(1) shall be made.

(d) **AVERAGE BASE PERIOD NET INCOME—DETERMINATION.**—

(1) **DEFINITION.**—For the purposes of this section the average base period net income of the taxpayer shall be the amount determined under subsection (e), subject to the exception that if the aggregate excess profits net income for the last half of its base period, reduced by the aggregate of the deficits in excess profits net income for such half, is greater than such aggregate so reduced for the first half, then the average base period net income shall be the amount determined under subsection (f), if greater than the amount determined under subsection (e).

(2) For the purposes of subsections (e) and (f), if the taxpayer was in existence during only part of the 48 months preceding the beginning of its first taxable year under this subchapter, its excess profits net income—

(A) for each taxable year of twelve months (beginning with the beginning of its base period) during which it was not in existence, shall be an amount equal to 8 per centum of the excess of—

(i) the daily invested capital for the first day of the taxpayer's first taxable year beginning after December 31, 1939, over

(ii) an amount equal to the same percentage of such daily invested capital as is applicable under section 720 in reduction of the average invested capital of the preceding taxable year;

(B) for the taxable year of less than twelve months consisting of that part of the remainder of its base period during which it was not in existence, shall be the amount ascertained for a full year under subparagraph (A), multiplied by the number of days in such taxable year of less than twelve months and divided by the number of days in the twelve months ending with the close of such taxable year.

(3) In no case shall the average base period net income be less than zero.

(4) For the computation of average base period net income in the case of certain reorganizations, see section 742.

(e) **AVERAGE BASE PERIOD NET INCOME—GENERAL AVERAGE.**—The average base period net income determined under this subsection shall be determined as follows:

(1) By computing the aggregate of the excess profits net income for each of the taxable years of the taxpayer in the base period, reduced by the sum of the deficits in excess profits net income for each of such years. If the excess profits net income (or deficit in excess profits net income) for one taxable year in the base period

divided by the number of months in such taxable year is less than 75 per centum of the aggregate of the excess profits net income (reduced by deficits in excess profits net income) for the other taxable years in the taxpayer's base period divided by the number of months in such other taxable years (herein called "average monthly amount") the amount used for such one year under this paragraph shall be 75 per centum of the average monthly amount multiplied by the number of months in such one year, and the year increased under this sentence shall be the year the increase in which will produce the highest average base period net income;

(2) By dividing the amount ascertained under paragraph (1) by the total number of months in all such taxable years; and

(3) By multiplying the amount ascertained under paragraph (2) by twelve.

(f) **AVERAGE BASE PERIOD NET INCOME—INCREASED EARNINGS IN LAST HALF OF BASE PERIOD.**—The average base period net income determined under this subsection shall be determined as follows:

(1) By computing, for each of the taxable years of the taxpayer in its base period, the excess profits net income for such year, or the deficit in excess profits net income for such year;

(2) By computing for each half of the base period the aggregate of the excess profits net income for each of the taxable years in such half, reduced, if for one or more of such years there was a deficit in excess profits net income, by the sum of such deficits. For the purposes of such computation, if any taxable year is partly within each half of the base period there shall be allocated to the first half an amount of the excess profits net income or deficit in excess profits net income, as the case may be, for such taxable year, which bears the same ratio thereto as the number of months falling within such half bears to the entire number of months in such taxable year; and the remainder shall be allocated to the second half;

(3) If the amount ascertained under paragraph (2) for the second half is greater than the amount ascertained for the first half, by dividing the difference by two;

(4) By adding the amount ascertained under paragraph (3) to the amount ascertained under paragraph (2) for the second half of the base period;

(5) By dividing the amount found under paragraph (4) by the number of months in the second half of the base period and by multiplying the result by twelve;

(6) The amount ascertained under paragraph (5) shall be the average base period net income determined under this subsection, except that the average base period net income determined under this subsection shall in no case be greater than the highest excess profits net income for any taxable year in the base period. For the purpose of such limitation if any taxable year is of less than twelve months, the excess profits net income for such taxable year shall be placed on an annual basis by multiplying by twelve and dividing by the number of months included in such taxable year.

(7) For the purposes of this subsection, the excess profits net income for any taxable year ending after May 31, 1940, shall not be greater than an amount computed as follows:

(A) By reducing the excess profits net income by an amount which bears the same ratio thereto as the number of months after May 31, 1940, bears to the total number of months in such taxable year; and

(B) By adding to the amount ascertained under subparagraph (A) an amount which bears the same ratio to the excess profits net income for the last preceding taxable year as such number of months after May 31, 1940, bears to the number of months in such preceding year. The amount added under this subparagraph shall not exceed the amount of the excess profits net income for such last preceding taxable year.

(C) If the number of months in such preceding taxable year is less than such number of months after May 31, 1940, by adding to the amount ascertained under subparagraph (B) an amount which bears the same ratio to the excess profits net income for the second preceding taxable year as the excess of such number of months after May 31, 1940, over the number of months in such preceding taxable year bears to the number of months in such second preceding taxable year.

(g) ADJUSTMENTS IN EXCESS PROFITS CREDIT ON ACCOUNT OF CAPITAL CHANGES.—For the purposes of this section—

(1) The net capital addition for the taxable year shall be the excess, divided by the number of days in the taxable year, of the aggregate of the daily capital addition for each day of the taxable year over the aggregate of the daily capital reduction for each day of the taxable year.

(2) The net capital reduction for the taxable year shall be the excess, divided by the number of days in the taxable year, of the aggregate of the daily capital reduction for each day of the taxable year over the aggregate of the daily capital addition for each day of the taxable year.

(3) The daily capital addition for any day of the taxable year shall be the aggregate of the amounts of money and property paid in for stock, or as paid-in surplus, or as a contribution to capital, after the beginning of the taxpayer's first taxable year under this subchapter and prior to such day. In determining the amount of any property paid in, such property shall be included in an amount determined in the manner provided in section 718(a)(2). A distribution by the taxpayer to its shareholders in its stock or rights to acquire its stock shall not be regarded as money or property paid in for stock, or as paid-in surplus, or as a contribution to capital. The amount ascertained under this paragraph shall be reduced by the excess, if any, of the excluded capital for such day over the excluded capital for the first day of the taxpayer's first taxable year under this subchapter. For the purposes of this paragraph the excluded capital for any day shall be an amount equal to the sum of the following:

(A) The aggregate of the adjusted basis (for determining loss upon sale or exchange) as of the beginning of such day, of obligations held by the taxpayer at the beginning of such day, which are described in section 22(b)(4) (A), (B), or

(C) any part of the interest from which is excludible from gross income or allowable as a credit against net income; and

(B) The aggregate of the adjusted basis (for determining loss upon sale or exchange) as of the beginning of such day, of stock of domestic corporations held by the taxpayer at the beginning of such day.

The daily capital addition shall in no case be less than zero. (For daily capital additions and reductions in case of certain reorganizations, see section 743.)

(4) The daily capital reduction for any day of the taxable year shall be the aggregate of the amounts of distributions to shareholders, not out of earnings and profits, after the beginning of the taxpayer's first taxable year under this subchapter and prior to such day.

(5) If, on any day of the taxable year, the taxpayer and any one or more other corporations are members of the same controlled group, then the daily capital reduction of the taxpayer for such day shall be increased by whichever of the following amounts is the lesser:

(A) The aggregate of the adjusted basis (for determining loss upon sale or exchange) of stock in such other corporation (or if more than one, in such other corporations) acquired by the taxpayer after the beginning of the taxpayer's first taxable year under this subchapter, minus the aggregate of the adjusted basis (for determining loss upon sale or exchange) of stock in such other corporation (or if more than one, in such other corporations) disposed of by the taxpayer prior to such day and after the beginning of the taxpayer's first taxable year under this subchapter; or

(B) The excess of the aggregate of the adjusted basis (for determining loss upon sale or exchange) of stock in all domestic corporations and of obligations described in section 22(b)(4), held by the taxpayer at the beginning of such day over the aggregate of the adjusted basis (for determining loss upon sale or exchange) of stock in all domestic corporations and of obligations described in section 22(b)(4), held by the taxpayer at the beginning of its first taxable year under this subchapter.

If any stock or obligations described in subparagraph (A) or (B) was disposed of prior to such day, its basis shall be determined under the law applicable to the year in which so disposed of. The excluded capital of the taxpayer for such day shall be reduced by the amount by which the taxpayer's daily capital reduction for such day is increased under this paragraph. As used in this paragraph, a controlled group means one or more chains of corporations connected through stock ownership with a common parent corporation if (i) more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock, of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations and (ii) the common parent corporation owns directly more than 50 per centum of the total combined voting power of all classes of

stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock, of at least one of the other corporations.

SEC. 35.713-1 EXCESS PROFITS CREDIT BASED ON INCOME—DETERMINATION OF AVERAGE BASE PERIOD NET INCOME.—(a) *Introductory.*—In order for a corporation to determine for any particular taxable year the amount of its excess profits credit based on income, it is necessary first to compute the amount of the average base period net income, 95 per cent of which is the starting point for computing the excess profits credit based on income. Two methods are provided for determining the average base period net income: (1) The general average method, set forth in section 713(e) and in subsection (b) of this section, and (2) the method set forth in section 713(f) and in subsection (c) of this section, applicable to cases in which the earnings for the last half of the base period are greater than those for the first half, if such method results in a greater average base period net income than that resulting from the use of the general average method.

(b) *Computation under the general average method.*—The following steps are required for the computation of the average base period net income under the general average method (for computation of excess profits net income for portions of its base period during which the corporation was not in existence, see subsection (d) of this section, and for certain limitations upon the average base period net income of a component corporation (as defined in section 740(b)), see section 35.740-2(c)):

(1) The excess profits net income, or deficit in excess profits net income, for each of the taxable years in the base period (years beginning after December 31, 1935, and before January 1, 1940) is to be determined as provided in section 711(b). The “deficit in excess profits net income” for any taxable year is the excess of deductions plus the credit for dividends received plus the credit for interest received allowed by section 26(a) over gross income. If the amount of the excess profits net income or the deficit in excess profits net income, as the case may be, for one taxable year in the base period, when divided by the number of months in such year, is less than 75 percent of the average monthly amount (for the other taxable years in the base period), there shall be substituted for the amount for such one year an amount of excess profits net income equal to 75 percent of such average monthly amount multiplied by the number of months in such year. The year to be increased under this provision is the year the increase in which will produce the highest average base period net income. The

"average monthly amount" referred to is the aggregate of the excess profits net income (reduced by deficits in excess profits net income) for the other taxable years in the taxpayer's base period divided by the number of months in such other taxable years.

(2) The aggregate of the excess profits net income for the taxable years in the base period, determined with respect to each year as provided in (1) above, disregarding any taxable year for which (after the application of (1) above) the excess profits net income is less than zero, is to be computed.

(3) From such aggregate amount there is to be deducted the sum of the deficits in excess profits net income, excluding a deficit for which an amount of income has been substituted as provided in (1) above.

(4) Such aggregate amount as so reduced is to be divided by the number of months in the taxable years in the base period and the quotient so obtained is to be multiplied by 12. In no case shall the average base period net income be less than zero.

If the base period is composed solely of 4 taxable years of 12 months each, the base period year which may be adjusted under section 713(e)(1) is the year of the lowest amount, i. e., the lowest excess profits net income or the greatest deficit. If the base period is more or less than 48 months, or is composed of more than 4 taxable years, the base period year the increase in the amount of which will produce the highest average base period net income and which may be adjusted accordingly under section 713(e)(1) must be determined by a test upon the facts of the case.

The computation of the average base period net income may be illustrated by the following examples:

Example (1). The excess profits net income, credit for interest received, credit for dividends received, deductions, and gross income (all computed by making the adjustments provided in section 711(b)) of the X Corporation (a domestic corporation), for the years 1936 to 1939, are as follows:

	1936	1937	1938	1939
Excess profits net income.....	\$100,000	—\$100,000	—\$60,000	\$30,000
Credit for interest received.....	10,000	10,000	10,000	10,000
Credit for dividends received.....	20,000	40,000	25,000	30,000
Deductions.....	60,000	150,000	150,000	90,000
Gross income.....	190,000	100,000	125,000	160,000

The average base period net income of the corporation is \$21,875, computed as follows:

- (i) Amount (excess profits net income or deficit) for taxable year in which increase under section 713(e) (1) will produce highest average base period net income (calendar year 1937)..... —\$100,000
- (ii) Average monthly deficit for 1937 ($-\$100,000 \div 12$)..... —8,333
- (iii) Aggregate for other taxable years in base period of excess profits net income reduced by deficits in excess profits net income ($\$100,000 + \$30,000 - \$60,000$)..... 70,000
- (iv) 75 percent of average monthly amount ($\$70,000 \div 36$, the number of months in the taxable years in the base period other than 1937) multiplied by the number of months in 1937. This amount is the substitute amount for 1937 (75 percent of $\frac{\$70,000}{36} \times 12$)..... 17,500
- (v) Aggregate of excess profits net income for taxable years in base period (other than those years for which there is a deficit in such income) before reduction required by section 713(e) (1) ($\$100,000 + \$17,500 + \$30,000$)..... 147,500
- (vi) Amount item (v) above is to be reduced as required by section 713(c) and (e) (1), i. e., deficit in excess profits net income for 1938..... 60,000
- (vii) Aggregate of excess profits net income for taxable years in base period as reduced (item (v) minus item (vi))..... 87,500
- (viii) Average base period net income, \$87,500 (item (vii)) divided by 48 (total number of months in taxable years in base period), multiplied by 12, or $\frac{\$87,500}{48} \times 12$ 21,875

Example (2). The excess profits net income (or deficit in excess profits net income) credit for interest received, credit for dividends received, deductions, and gross income (all computed by making the adjustments provided in section 711(b)) of the Y Corporation (a domestic corporation), for its taxable years beginning in the base period (the calendar years 1936 and 1937, the short-period year January 1, 1938, through June 30, 1938, resulting from a change from the calendar year to a fiscal year, and the fiscal years ending June 30, 1939, and June 30, 1940) are as follows:

	Calendar year 1936	Calendar year 1937	Short period year 1938	Fiscal year 1939	Fiscal year 1940
Excess profits net income.....	\$100,000	—\$60,000	—\$60,000	—\$40,000	\$25,200
Credit for interest received.....	10,000	10,000	5,000	10,000	10,000
Credit for dividends received.....	20,000	25,000	15,000	20,000	20,000
Deductions.....	60,000	150,000	100,000	130,000	144,800
Gross income.....	190,000	125,000	60,000	120,000	200,000

The average base period net income of the corporation is \$6,800, computed as follows:

- (i) Amount (excess profits net income or deficit) for taxable year in which increase under section 713(e) (1) will produce highest average base period net income (calendar year 1937)..... —\$60,000
- (ii) Average monthly deficit for 1937 ($-\$60,000 \div 12$)..... —5,000

(iii) Aggregate for other taxable years in base period of excess profits net income reduced by deficits in excess profits net income (\$100,000+\$25,200-\$60,000-\$40,000)-----	\$25,200
(iv) Average monthly amount (\$25,200÷42 (total number of months in taxable years in base period other than 1937))-----	600
(v) 75 percent of amount in (iv)-----	450
(vi) Amount of excess profits net income to be used for 1937 (12×\$450)-----	5,400
(vii) Aggregate of excess profits net income for taxable years in base period (other than those years for which there is a deficit in such income), before reduction required by section 713(e) (1) (\$100,000+\$5,400+\$25,200)-----	130,600
(viii) Amount item (vii) above is to be reduced as required by section 713 (c) and (e) (1), i. e., sum of deficits in excess profits net income \$60,000+\$40,000)-----	100,000
(ix) Aggregate of excess profits net income for taxable years in base period as reduced (item (vii) minus item (viii))-----	30,600
(x) Average base period net income, \$30,600 (item (ix)), divided by 54 (total number of months in taxable years in base period), multiplied by 12, or $\frac{\$30,600}{54} \times 12$ -----	6,800

(c) *Computation under section 713(f); increased earnings in last half of base period.*—The determination of the base period net income under the method set forth in section 713(f) is operative only if the aggregate excess profits net income for the last half of the base period of the taxpayer, reduced by the aggregate of the deficits in excess profits net income for such half, is greater than such aggregate so reduced for the first half and the average base period net income determined under section 713(f) is greater than the amount determined under section 713(e). The following steps are required for the computation of the average base period net income under the method set forth in section 713(f):

(1) The excess profits net income or the deficit in excess profits net income for each of the taxable years in the base period (years beginning after December 31, 1935, and before January 1, 1940) is to be determined as provided in section 711(b).

(2) The base period is to be divided into halves, each of an equal number of months. There is to be computed for each half of the base period the aggregate of the excess profits net income for each of the taxable years in such half, reduced, if for one or more of such years there was a deficit in excess profits net income, by the sum of such deficits. In making this computation, no substitute amount of excess profits net income is to be used for any taxable year as in the case of the general average method under section 713(e) (1).

(3) The excess of the amount ascertained for the second half over the amount ascertained for the first half is to be divided by 2.

(4) The amount ascertained under paragraph (3) is to be added to the amount ascertained under paragraph (2) for the second half of the base period.

(5) The amount found under paragraph (4) is to be divided by the number of months in the second half of the base period and the result multiplied by 12.

(6) The amount ascertained under paragraph (5) shall be the average base period net income determined under the method set forth in section 713(f), except that the average base period net income so determined shall in no case be greater than the highest excess profits net income for any taxable year in the base period. For the purpose of this limitation if any taxable year is less than 12 months, the excess profits net income for such taxable year shall be placed on an annual basis by multiplying by 12 and dividing by the number of months included in such taxable year. For a restriction upon this limitation in the case of a component corporation, see section 35.740-2(o).

The computation of the average base period net income under the method set forth in section 713(f) may be illustrated by the following example:

Example. The X Corporation, which makes its income tax returns on the calendar year basis, has the following amounts of excess profits net income for the taxable years in its base period: 1936, \$100,000; 1937, \$200,000; 1938, \$300,000; and 1939, \$400,000. Its average base period net income under the method set forth in section 713(f) is \$400,000, computed as follows:

(1) Aggregate of excess profits net income for taxable years in second half of base period (\$300,000 plus \$400,000)-----	\$700,000
(2) Aggregate of excess profits net income for taxable years in first half of base period (\$100,000 plus \$200,000)-----	300,000
(3) Item (1) less item (2) (\$700,000 minus \$300,000)-----	<u>400,000</u>
(4) Item (3) divided by 2 (\$400,000 divided by 2)-----	200,000
(5) Sum of item (1) plus item (4) (\$700,000 plus \$200,000)-----	900,000
(6) Item (5) placed on annual basis by dividing it by number of months in second half of base period and multiplying by 12 ((900,000 divided by 24) multiplied by 12)-----	450,000
(7) Highest excess profits net income for any taxable year in base period (1939)-----	400,000
(8) Average base period net income (item (7) since such item is less than item (6))-----	<u>400,000</u>

The provision of section 713(f) (2) relative to the manner of computation of the aggregate excess profits net income for each half of the base period where the taxpayer, because of changes in its accounting period or for other reasons, has more or less than four taxable years in such period, and where part of one taxable year is in the first half

and the other part is in the second half of such period, may be illustrated by the following example:

Example. A corporation has taxable years in its base period and excess profits net incomes for such years as follows:

Years in base period		Number of months	Excess profits net income
Beginning—	Ending—		
Sept. 1, 1936.....	Aug. 31, 1937.....	12	\$30,000
Sept. 1, 1937.....	Dec. 31, 1937.....	4	20,000
Jan. 1, 1938.....	Dec. 31, 1938.....	12	60,000
Jan. 1, 1939.....	Dec. 31, 1939.....	12	100,000
Total.....	40	210,000

The aggregate excess profits net income for the first half of the base period is \$70,000, and for the second half it is \$140,000, computed as follows:

	Number of months	Excess profits net income
FIRST HALF		
The taxable year beginning Sept. 1, 1936, and ending Aug. 31, 1937.....	12	\$30,000
The taxable year beginning Sept. 1, 1937, and ending Dec. 31, 1937.....	4	20,000
One-third of the taxable year beginning Jan. 1, 1938, and ending Dec. 31, 1938.....	4	20,000
Total.....	20	70,000
SECOND HALF		
Two-thirds of the taxable year beginning Jan. 1, 1938, and ending Dec. 31, 1938.....	8	40,000
The taxable year beginning Jan. 1, 1939, and ending Dec. 31, 1939.....	12	100,000
Total.....	20	140,000

For the purpose of computing the average base period net income thereunder, section 713(f) (7) provides certain limitations on the amount of the excess profits net income for any taxable year in the base period ending after May 31, 1940.

Section 713(f) (7) (A) and (B) may be illustrated by the following example:

Example. The Y Corporation makes its income tax returns on the basis of the fiscal year ending September 30. It had an excess profits net income of \$400,000 for the fiscal year ended September 30, 1939. It had an excess profits net income of \$600,000 for the fiscal year ended September 30, 1940, before the application of section 713(f) (7) (A) and (B). Both of these taxable years are in its base period but four months of the fiscal year ended September 30, 1940, are after May 31,

1940. Under section 713(f) (7) (A) and (B) the excess profits net income of the corporation for the fiscal year beginning October 1, 1939, and ended September 30, 1940, is \$533,333.33, computed as follows:

(1) Excess profits net income before application of section 713(f) (7) (A) and (B)-----	\$600,000.00
(2) Amount by which item (1) is to be reduced under section 713(f) (7) (A) (four-twelfths of \$600,000)-----	200,000.00
(3) Item (1) less item (2) (\$600,000 minus \$200,000)-----	400,000.00
(4) Amount to be added to item (3) under section 713(f) (7) (B) (four-twelfths of \$400,000)-----	133,333.33
(5) Excess profits net income for fiscal year ended September 30, 1940, after application of section 713(f) (7) (item (3) plus item (4), \$400,000 plus \$133,333.33)-----	533,333.33

Section 713(f) (7) (C) may be illustrated by the following example:

Example. The last three taxable years in the base period of the Z Corporation and the number of months in, and the excess profits net income for, such taxable years are as follows:

Taxable years		Number of months	Excess profits net income
Beginning—	Ending—		
July 1, 1938-----	June 30, 1939-----	12	\$400,000
July 1, 1939-----	Sept. 30, 1939-----	3	75,000
Oct. 1, 1939-----	Sept. 30, 1940-----	12	600,000

Under section 713(f) (7) the excess profits net income of the corporation for the fiscal year ended September 30, 1940, is \$508,333.33, computed as follows:

(1) Excess profits net income before application of section 713(f) (7) (A) and (B)-----	\$600,000.00
(2) Amount by which item (1) is to be reduced under section 713(f) (7) (A) (four-twelfths of \$600,000)-----	200,000.00
(3) Item (1) less item (2) (\$600,000 minus \$200,000)-----	400,000.00
(4) Amount to be added to item (3) under section 713(f) (7) (B) (four-thirds of \$75,000 but not in excess of \$75,000)-----	75,000.00
(5) Amount to be added to item (3) under section 713(f) (7) (C) (one-twelfth of \$400,000)-----	33,333.33
(6) Excess profits net income for fiscal year ended September 30, 1940, after application of section 713(f) (7) (sum of items (3), (4), and (5), or \$400,000 plus \$75,000 plus \$33,333.33)---	508,333.33

(d) *Computation of excess profits net income for portions of base period during which corporation was not in existence; applicable both under sections 713(e) and 713(f).*—The base period of a corporation which was in existence during only part of the 48-month period pre-

ceding the beginning of its first excess profits tax taxable year is such period of 48 months. Section 713(d)(2) provides a method for determining the excess profits net income for such a corporation for that portion of such base period during which it was not in existence. For each taxable year of 12 months (beginning with the beginning of the base period) during which it was not in existence the excess profits net income is 8 per cent of the corporation's daily invested capital (see section 717) for the first day of its first excess profits tax taxable year reduced on account of inadmissible assets by the same ratio as would be applicable under section 720 in reduction of its average invested capital for the preceding taxable year. The excess profits net income for a taxable year of less than 12 months consisting of that part of the remainder of the base period during which it was not in existence is a proportionate part of such amount. The provisions of this paragraph may be illustrated by the following example:

Example. The Z Corporation, a domestic corporation which makes its income tax returns on the calendar year basis, was organized on July 1, 1937. The daily invested capital of the corporation for January 1, 1940, is \$200,000. The percentage of such invested capital which would be applicable under section 720 in reduction of the average invested capital of the corporation on account of inadmissible assets for the calendar year 1939 is 5.

The excess profits net income of the Z Corporation for 1936 is \$15,200, and for the period January 1, 1937, to June 30, 1937, \$7,537.53, computed as follows:

(1) Daily invested capital for January 1, 1940-----	\$200,000.00
(2) Amount equal to the same percentage (5 per cent) of item (1) as is applicable under section 720 in reduction of the average invested capital for preceding taxable year, 1939 (\$200,000 multiplied by 0.05)-----	10,000.00
(3) Excess of item (1) over item (2)-----	190,000.00
(4) Excess profits net income for 1936 (\$190,000 multiplied by 0.08)-----	15,200.00
(5) Excess profits net income for period from January 1, 1937, to June 30, 1937 ($\frac{\$15,200 \times 181}{365}$)-----	7,537.53

SEC. 35.713-2 EXCESS PROFITS CREDIT BASED ON INCOME—ADJUSTMENTS IN EXCESS PROFITS CREDIT ON ACCOUNT OF CAPITAL CHANGES.—

(a) *General.*—Under the income method of determining the excess profits credit it is necessary to make adjustments for capital changes since the beginning of the first excess profits tax taxable year.

The amount representing 95 percent of the average base period net income which is the starting point in the computation of the excess profits credit shall be increased by 8 per cent of the net capital addition or reduced by 6 percent of the net capital reduction. No capital adjustments are permitted or required in the case of a

foreign corporation. Capital additions are money and property paid in for stock, or as paid-in surplus, or as a contribution to capital after the beginning of the first excess profits tax taxable year, adjusted for increases in excluded capital over the same period. Capital reductions are (1) distributions since the beginning of the first excess profits tax taxable year which are not out of earnings and profits; and (2) increased holdings since the beginning of the first excess profits tax taxable year of stock in another corporation which is a member of a controlled group of corporations of which the taxpayer is also a member, limited as provided in section 713 (g) (5) (B). The term "earnings and profits" includes earnings and profits of the taxable year and the accumulated earnings and profits of the corporation, whether accumulated before, on, or after March 1, 1913. For capital additions and reductions in case of certain reorganizations, see section 743.

(b) *Computation of net capital addition.*—Computation of net capital addition is illustrated by the following example:

Example. On January 1, 1940, the X Corporation, which makes its income tax returns on the calendar year basis, owns stock (but not more than 50 percent) in another domestic corporation, acquired in 1938, the adjusted basis of which is \$10,000 and \$30,000 of State bonds which it had purchased in 1938 for \$32,000.

The following were the only changes which occurred during the period 1940–1944, inclusive, that would affect the determination of the net capital addition or the net capital reduction of the corporation:

(1) On April 1, 1944, there was paid into the corporation for shares of its stock real estate having a basis to the corporation of \$30,000.

(2) On July 1, 1944, there was paid into the corporation for shares of its stock Treasury bonds having a basis to the corporation of \$22,400 and cash in the amount of \$36,600.

The net capital addition of the corporation for 1944 is \$40,759.02, computed as follows:

Period April 2, 1944, to July 1, 1944, inclusive

(1) Real estate paid in for stock April 1, 1944-----	\$30,000.00
(2) Less: Excess of excluded capital for each day of period over excluded capital on January 1, 1940 ¹ -----	None
¹ (i) Excluded capital for each day of period:	
(A) Stock of domestic corporations-----	\$10,000
(B) State bonds-----	32,000
Total-----	<u>42,000</u>
(ii) Excluded capital for January 1, 1940:	
(A) Stock of domestic corporations-----	10,000
(B) State bonds-----	32,000
Total-----	<u>42,000</u>
(iii) Excess of excluded capital for each day of period over excluded capital on January 1, 1940-----	None

(3) Daily capital addition for each day of period (item (1) minus item (2))-----	\$30,000.00
(4) Aggregate of daily capital additions for period (\$30,000 multiplied by 91, number of days in period)-----	2,730,000.00

Period July 2, 1944, to December 31, 1944, inclusive

(5) Real estate, as above-----	\$30,000.00
(6) Treasury bonds paid in for stock July 1, 1944-----	22,400.00
(7) Cash paid in for stock July 1, 1944-----	36,600.00
(8) Total-----	89,000.00
(9) Less: Excess of excluded capital for each day of period over excluded capital on January 1, 1940 ² -----	22,400.00
(10) Daily capital addition for each day of period (item (8) minus item (9))-----	66,600.00
(11) Aggregate of daily capital additions for period (\$66,600 multiplied by 183, number of days in period)-----	12,187,800.00
(12) Aggregate of daily capital additions for 1944 (item (4) plus item (11))-----	14,917,800.00
(13) Net capital addition (\$14,917,800 divided by 366, number of days in taxable year)-----	40,759.02
*(i) Excluded capital for each day of period:	
(A) Stock of domestic corporations-----	\$10,000
(B) State bonds-----	32,000
(C) Treasury bonds-----	22,400
Total-----	64,400
(ii) Excluded capital for January 1, 1940-----	42,000
(iii) Excess of excluded capital for each day of period over excluded capital on January 1, 1940 (\$64,400 minus \$42,000)-----	22,400

(c) *Computation of net capital reduction on account of distributions under section 713(g)(4).*—Computation of net capital reduction in a case to which only section 713(g)(4) applies is illustrated by the following example:

Example. The Y Corporation, a domestic corporation which makes its income tax returns on the calendar year basis, was organized on January 1, 1910, with an authorized and outstanding capital stock of 2,000 shares of common stock of a par value of \$100 each and 1,000 shares of participating preferred stock of a par value of \$100 each. Each share of preferred stock is entitled to receive annual dividends of \$7, and \$100 on complete liquidation, in priority to any payments on common stock, and is entitled to participate equally with each share of the common stock in either instance after the common stock has received a similar amount. The preferred stock is redeemable in whole or in part at the option of the board of directors at any time at \$106 per share plus its proportion of the earnings of the

company at the time of such redemption. The preferred stock was issued at \$106 per share for a total of \$106,000, and the common stock was issued at \$100 per share for a total of \$200,000. On July 1, 1944, the company had a paid-in surplus of \$6,000, consisting of the premium received on the preferred stock, earnings and profits of \$30,000 accumulated prior to March 1, 1913, and earnings and profits accumulated since February 28, 1913, of \$75,000. On July 1, 1944, the option with respect to the preferred stock is exercised and the entire amount of such stock is redeemed at \$141 per share for a total of \$141,000, such transaction being a partial liquidation under section 115(c). The corporation has no other transactions during the year 1944 which affect the capital of the corporation.

The net capital reduction of the corporation for 1944 is \$53,000, computed as follows:

(1) Total amount distributed to preferred shareholders.....	\$141, 000
(2) Allocation of the amount distributed:	
(i) Attributable to par value.....	\$100, 000
(ii) Attributable to paid-in surplus.....	6, 000
(iii) Attributable to earnings and profits accumulated as of July 1, 1944 (one-third of (\$30,000 plus \$75,000))	35, 000
Total.....	141, 000
(3) Amount of distribution not out of earnings and profits (\$100,000 plus \$6,000)	106, 000
(4) Aggregate of the daily capital reduction from July 2, 1944, to December 31, 1944, both dates inclusive (\$106,000 multiplied by 183, number of days in taxable year after distribution)	19, 398, 000
(5) Net capital reduction (\$19,398,000 divided by 366, number of days in taxable year)	53, 000

(d) *Computation of capital reduction and excluded capital in case of increased holding of stock of controlled corporation.*—Section 713(g)

(5) provides that if on any day of the taxable year a taxpayer and one or more other corporations are members of the same controlled group, the increase in the taxpayer's holdings in the stock of such other corporation or corporations since the beginning of the taxpayer's first excess profits tax taxable year and before the beginning of such day shall be a daily capital reduction of the taxpayer for such day, except as limited by (2) below. The amount of such daily capital reduction (or the amount by which the taxpayer's daily capital reduction for such day is to be increased) on account of such stock is the lesser of the amounts determined by two rules:

(1) The first rule provides that the amount of such increase shall equal the aggregate of the adjusted basis (for determining loss upon sale or exchange) of the stock in such other corporation or corpora-

tions acquired by the taxpayer after the beginning of the taxpayer's first excess profits tax taxable year, minus the aggregate of the adjusted basis (for determining loss upon sale or exchange) of the stock in such other corporation or corporations disposed of by the taxpayer prior to such day and after the beginning of the taxpayer's first excess profits tax taxable year.

(2) The second rule provides that the amount of such increase shall equal the excess of the aggregate of the adjusted basis (for determining loss upon sale or exchange) of stock in all domestic corporations and of obligations described in section 22(b)(4), held by the taxpayer at the beginning of such day, over the aggregate of the adjusted basis (for determining loss upon sale or exchange) of stock in all domestic corporations and of obligations described in section 22(b)(4), held by the taxpayer at the beginning of its first excess profits tax taxable year.

In applying these rules, if any stock or obligations referred to therein were disposed of prior to the day for which the computation is being made, the basis shall be determined under the law applicable to the year in which disposed of.

The excluded capital of the taxpayer for the day for which the computation is being made shall be reduced by the amount by which the taxpayer's daily capital reduction for such day is increased by the application of such rules.

For definition of the term "controlled group," as here used, see section 713(g)(5).

The effect of section 713(g)(5) is illustrated by the following example:

Example. Corporation A and Corporation B compute their income taxes on the calendar year basis. Corporation B has 10,000 shares of capital stock outstanding. Corporation A engages in the following transactions with respect to the following items:

With respect to stock of B Corporation:

January 1, 1932, acquired 1,000 shares (10 percent) with a basis of \$10,000.

September 30, 1941, acquired 4,500 shares (45 percent) with a basis of \$45,000.

August 31, 1942, sold 1,000 shares (10 percent) with a basis of \$10,000.

With respect to bonds of State of X:

January 1, 1939, acquired bonds with a basis of \$40,000.

March 31, 1941, acquired bonds with a basis of \$50,000.

April 30, 1942, sold bonds with a basis of \$75,000.

With respect to capital additions:

June 30, 1941, capital stock issued (to others than B) for \$75,000 cash.

The daily capital additions and reductions of A for 1942 are as follows:

Capital additions for 1942

(1)	(2)	(3)	(4)
For each day in period—	Cumulative addition to capital	Increase in excluded capital since Dec. 31, 1939	Capital addition (col. (2) minus col. (3), but not less than zero)
(i) Jan. 1–Apr. 30.....	^a \$75,000	^b \$50,000	\$25,000
(ii) ¹ May 1–Aug. 31.....	^c 75,000	^c 0	75,000
(iii) ² Sept. 1–Dec. 31.....	^c 75,000	10,000	65,000

¹ Excluded capital May 1, 1942 (\$15,000 bonds of X plus \$55,000 stock of B)..... \$70,000
 Excluded capital Jan. 1, 1940 (\$40,000 bonds of X plus \$10,000 stock of B)..... 50,000

Increase in excluded capital as of May 1, 1942..... 20,000

² Excluded capital Sept. 1, 1942 (\$15,000 bonds of X plus \$45,000 stock of B)..... \$60,000
 Excluded capital Jan. 1, 1940 (\$40,000 bonds of X plus \$10,000 stock of B)..... 50,000

Increase in excluded capital as of Sept. 1, 1942..... 10,000

^a Stock issued.

^b \$95,000 minus \$45,000 capital reduction in (iv).

^c \$20,000 minus \$20,000 capital reduction in (v).

Capital reductions for 1942

(1)	(2)	(3)	(4)
For each day in period—	Basis of stock in B held	Lesser of basis of stock in B acquired since Dec. 31, 1939, or of increase in excluded capital since Dec. 31, 1939	Capital reduction (amount in col. (3) if col. (2) is more than 50 percent)
(iv) Jan. 1–Apr. 30.....	^a \$55,000	^b \$45,000	\$45,000
(v) ¹ May 1–Aug. 31.....	^a 55,000	^c 20,000	20,000
(vi) Sept. 1–Dec. 31.....	^d 45,000		0

¹ Excluded capital May 1, 1942 (\$15,000 bonds of X plus \$55,000 stock of B)..... \$70,000
 Excluded capital Jan. 1, 1940 (\$40,000 bonds of X plus \$10,000 stock of B)..... 50,000

Increase in excluded capital as of May 1, 1942..... 20,000

^a 55 percent.

^b Stock in B.

^c Excluded capital.

^d 45 percent.

SEC. 714. EXCESS PROFITS CREDIT—BASED ON INVESTED CAPITAL. [ADDED BY SEC. 201, SECOND REV. ACT 1940; AMENDED BY SEC. 201(b), REV. ACT 1941, AND BY SEC. 217, REV. ACT 1942.]

The excess profits credit, for any taxable year, computed under this section, shall be the amount shown in the following table:

If the invested capital for the taxable year, determined under section 715, is:

Not over \$5,000,000-----
Over \$5,000,000, but not over \$10,000,000.
Over \$10,000,000, but not over \$200,000,000.
Over \$200,000,000-----

The credit shall be:

8% of the invested capital.
\$400,000, plus 7% of the excess over \$5,000,000.
\$750,000, plus 6% of the excess over \$10,000,000.
\$12,150,000, plus 5% of the excess over \$200,000,000.

SEC. 35.714-1 EXCESS PROFITS CREDIT BASED ON INVESTED CAPITAL.—

Section 714 applies only to a corporation which under section 712 is entitled or is required to compute its excess profits credit under the invested capital method. Regardless of the ratio of earnings to invested capital for previous taxable years, such credit is an amount equal to 8 per cent of the corporation's invested capital for the taxable year, except that if such invested capital for any taxable year exceeds \$5,000,000, the credit for such taxable year is an amount determined in accordance with the table set forth in section 714. For computation of excess profits net income if excess profits credit based on invested capital is used, see section 711(a) (2).

SEC. 715. DEFINITION OF INVESTED CAPITAL. [ADDED BY SEC. 201, SECOND REV. ACT 1940.]

For the purposes of this subchapter the invested capital for any taxable year shall be the average invested capital for such year, determined under section 716, reduced by an amount computed under section 720 (relating to inadmissible assets). If the Commissioner finds that in any case the determination of invested capital, on a basis other than a daily basis, will produce an invested capital differing by not more than \$1,000 from an invested capital determined on a daily basis, he may, under regulations prescribed by him with the approval of the Secretary, provide for such determination on such other basis. (For computation of invested capital in case of foreign corporations and corporations entitled to the benefits of section 251, see section 724.)

SEC. 35.715-1 DETERMINATION OF INVESTED CAPITAL.—It is necessary for a taxpayer using the invested capital method in computing the excess profits credit to determine the invested capital for the taxable year. This is not the invested capital at the beginning of the taxable year but the average invested capital for the taxable year, reduced by an amount computed under section 720 if the taxpayer owned any inadmissible assets during the taxable year. The average **invested capital for the taxable year** is the aggregate of the daily invested capital for each day of the taxable year, whether such daily

invested capital be a positive amount or a negative amount, divided by the number of days in such taxable year. In no event shall the average invested capital, or the invested capital, be an amount which is less than zero. The invested capital shall be computed in all cases on a daily basis.

The daily invested capital is the sum of the equity invested capital, as determined under section 718 (whether such equity invested capital be a positive amount or a negative amount), and the borrowed invested capital, as determined under section 719. The daily invested capital of a transferee upon an exchange, as defined in section 760(a), for any day after such exchange shall be reduced by the amount of any excess computed under the provisions of section 760(c). If the amount of the equity invested capital determined under section 718 is a negative amount and is not offset by borrowed invested capital, or if the amount of the reduction under section 760(c) in daily invested capital is larger than the amount of such daily invested capital computed without regard to such reduction, the daily invested capital will be a negative amount.

If, during the taxable year, a corporation is not involved in a tax-free liquidation and neither receives new capital, whether paid in or borrowed, nor makes any distribution other than out of earnings and profits of the taxable year, nor retires indebtedness of the character includible in borrowed capital, its average invested capital for the taxable year is an amount equal to its daily invested capital for the first day of the taxable year.

In cases where the changes in invested capital are not numerous during the taxable year, the determination of the average invested capital may generally be simplified by taking the invested capital as of the first day of the taxable year and adding thereto such portion of each addition made during the year as the number of days remaining in the taxable year after such addition bears to the total number of days in the taxable year, and subtracting such portion of each reduction of capital as the number of days after such reduction bears to the total number of days in the taxable year. A simple method for determining average invested capital is illustrated by the following example:

Example. The invested capital of the X Corporation, which files its income tax returns on the calendar year basis, is \$500,000 on January 1, 1944. The only changes in invested capital during the taxable year 1944 are as follows:

(a) On April 1, 1944, money amounting to \$100,000 is paid in for stock.

(b) On October 1, 1944, a capital distribution is made amounting to \$200,000.

Aggregate invested capital from January 1 to April 1, inclusive (92 days), \$500,000×92-----	\$46,000,000.00
Aggregate invested capital from April 2 to October 1, inclusive (183 days) (\$500,000 plus \$100,000)×183-----	109,800,000.00
Aggregate invested capital from October 2 to December 31, inclu- sive (91 days) (\$600,000 minus \$200,000)×91-----	36,400,000.00
Aggregate invested capital for 1944-----	192,200,000.00
Average invested capital for 1944 (\$192,200,000 divided by 366, number of days in taxable year)-----	525,136.61

SEC. 716. AVERAGE INVESTED CAPITAL. [ADDED BY SEC. 201, SECOND REV. ACT 1940.]

The average invested capital for any taxable year shall be the aggregate of the daily invested capital for each day of such taxable year, divided by the number of days in such taxable year.

SEC. 717. DAILY INVESTED CAPITAL. [ADDED BY SEC. 201, SECOND REV. ACT 1940.]

The daily invested capital for any day of the taxable year shall be the sum of the equity invested capital for such day plus the borrowed invested capital for such day determined under section 719.

SEC. 718. EQUITY INVESTED CAPITAL. [ADDED BY SEC. 201, SECOND REV. ACT 1940; AMENDED BY SECS. 202(f) AND 203, REV. ACT 1941, AND BY SECS. 205(d), 218, 219, AND 230 (b) AND (c), REV. ACT 1942.]

(a) **DEFINITION.**—The equity invested capital for any day of any taxable year shall be determined as of the beginning of such day and shall be the sum of the following amounts, reduced as provided in subsection (b)—

(1) **MONEY PAID IN.**—Money previously paid in for stock, or as paid-in surplus, or as a contribution to capital;

(2) **PROPERTY PAID IN.**—Property (other than money) previously paid in (regardless of the time paid in) for stock, or as paid-in surplus, or as a contribution to capital. Such property shall be included in an amount equal to its basis (unadjusted) for determining loss upon sale or exchange. If the property was disposed of before such taxable year, such basis shall be determined under the law applicable to the year of disposition, but without regard to the value of the property as of March 1, 1913. If the property was disposed of before March 1, 1913, its basis shall be considered to be its fair-market value at the time paid in. If the unadjusted basis of the property is a substituted basis, such basis shall be adjusted, with respect to the period before the property was paid in, by an amount equal to the adjustments proper under section 115(1) for determining earnings and profits;

(3) **DISTRIBUTIONS IN STOCK.**—Distributions in stock—

(A) Made prior to such taxable year to the extent to which they are considered distributions of earnings and profits; and

(B) Previously made during such taxable year to the extent to which they are considered distributions of earnings and profits other than earnings and profits of such taxable year;

(4) **EARNINGS AND PROFITS AT BEGINNING OF YEAR.**—The accumulated earnings and profits as of the beginning of such taxable year:

(5) [Not applicable to taxable years under these regulations (section 230 (c) and (d), Rev. Act 1942).]

(6) **NEW CAPITAL.**—An amount equal to 25 per centum of the new capital for such day. The term "new capital" for any day means so much of the amounts of money or property includible for such day under paragraphs (1) and (2) as was previously paid in during a taxable year beginning after December 31, 1940, and so much of the distributions in stock includible for such day under paragraph (3) as was previously made during a taxable year beginning after December 31, 1940, subject to the following limitations:

(A) There shall not be included money or property paid in by a corporation in an exchange to which section 112(b) (3), (4), or (5), or so much of section 112(c), (d), or (e) as refers to section 112(b) (3), (4), or (5) is applicable (or would be applicable except for section 371(g)), or would have been applicable if the term "control" had been defined in section 112(h) to mean the ownership of stock possessing more than 50 per centum of the total combined voting power of all classes of stock entitled to vote or more than 50 per centum of the total value of shares of all classes of stock.

(B) There shall not be included money or property paid in to the taxpayer by a transferor corporation if immediately after such transaction the transferor and the taxpayer are members of the same controlled group. As used in this subparagraph and subparagraph (C), a controlled group means one or more chains of corporations connected through stock ownership with a common parent corporation if (i) more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock, of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations, and (ii) the common parent corporation owns directly more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of the classes of stock, of at least one of the other corporations.

(C) There shall not be included a distribution in stock described in paragraph (3) made to another corporation, if immediately after the distribution the taxpayer and the distributee are members of the same controlled group.

(D) **Increase in Inadmissible Assets.**—The new capital for any day of the taxable year, computed without the application of subparagraph (E), shall be reduced by the excess, if any, of the amount computed under section 720(b) with respect to inadmissible assets held on such day, over the amount computed under section 720(b) with respect to inadmissible assets held on the first day of the taxpayer's first taxable year beginning after December 31, 1940. For the purposes of this subparagraph, in determining whether obligations which are described in section 22(b) (4) any part of the interest from which is excludible from gross income or allowable as a credit against net income are to be treated as admissible or inadmissible assets, such obligations shall be treated in the same manner as

they are treated for the taxable year for which tax under this subchapter is being computed.

(E) Maximum New Capital Allowable.—The new capital for any day of the taxable year shall not be more than the amount, if any, by which—

(i) the sum of the equity invested capital (computed without regard to this paragraph) and the borrowed capital (as defined in section 719(a)) of the taxpayer as of such day, reduced by the amount of money or property paid in which is excluded by reason of the limitation of subparagraph (A) or (B) of this paragraph, exceeds

(ii) the sum of such equity invested capital and borrowed capital as of the beginning of the first day of such taxpayer's first taxable year beginning after December 31, 1940, reduced by the amount, if any, by which the accumulated earnings and profits as of such first day of such first taxable year exceed the accumulated earnings and profits (computed without regard to distributions made in taxable years beginning after December 31, 1940) as of the beginning of the first day of the taxable year for which the tax under this subchapter is being computed.

(F) Reduction on Account of Distributions Out of Pre-1941 Accumulated Earnings and Profits.—The new capital for any day of the taxable year, computed without the application of subparagraph (E), shall be reduced by the amount which, after the beginning of the first taxable year which begins after December 31, 1940, has been distributed out of earnings and profits accumulated prior to the beginning of such first taxable year.

(7) DEFICIT IN EARNINGS AND PROFITS OF ANOTHER CORPORATION.—In the case of a transferee, as defined in subsection (c) (5), an amount, determined under such paragraph, equal to the portion of the deficit in earnings and profits of a transferor attributable to property received previously to such day.

(b) REDUCTION IN EQUITY INVESTED CAPITAL.—The amount by which the equity invested capital for any day shall be reduced as provided in subsection (a) shall be the sum of the following amounts—

(1) DISTRIBUTIONS IN PREVIOUS YEARS.—Distributions made prior to such taxable year which were not out of accumulated earnings and profits;

(2) DISTRIBUTIONS DURING THE YEAR.—Distributions previously made during such taxable year which are not out of the earnings and profits of such taxable year;

(3) EARNINGS AND PROFITS OF ANOTHER CORPORATION.—The earnings and profits of another corporation which previously at any time were included in accumulated earnings and profits by reason of a transaction described in section 112 (b) to (e), both inclusive, or in the corresponding provision of a prior revenue law, or by reason of the transfer by such other corporation to the taxpayer of property the basis of which in the hands of the taxpayer is or was determined with reference to its basis in the hands of such other corporation, or would have been so determined if the property had been other than money; and

(4) [Not applicable to taxable years under these regulations (section 230 (c) and (d), Rev. Act 1942).]

(5) **DEFICIT IN EARNINGS AND PROFITS TRANSFERRED TO ANOTHER CORPORATION.**—In the case of a transferor, as defined in subsection (c) (5), an amount, determined under such paragraph, equal to the portion of the deficit in earnings and profits of the transferor attributable to property transferred previously to such day.

(c) **RULES FOR APPLICATION OF SUBSECTIONS (a) AND (b).**—For the purposes of subsections (a) and (b)—

(1) **DISTRIBUTIONS TO SHAREHOLDERS.**—The term “distribution” means a distribution by a corporation to its shareholders, and the term “distribution in stock” means a distribution by a corporation in its stock or rights to acquire its stock. To the extent that a distribution in stock is not considered a distribution of earnings and profits it shall not be considered a distribution. A distribution in stock shall not be regarded as money or property paid in for stock, or as paid-in surplus, or as a contribution to capital.

(2) **DISTRIBUTIONS IN FIRST SIXTY DAYS OF TAXABLE YEAR.**—In the application of such subsections to any taxable year beginning after December 31, 1940, so much of the distributions (taken in the order of time) made during the first sixty days thereof as does not exceed the accumulated earnings and profits as of the beginning thereof (computed without regard to this paragraph) shall be considered to have been made on the last day of the preceding taxable year.

(3) **COMPUTATION OF EARNINGS AND PROFITS OF TAXABLE YEAR.**—For the purposes of subsections (a) (3) (B) and (b) (2) in determining whether a distribution is out of the earnings and profits of any taxable year, such earnings and profits shall be computed as of the close of such taxable year without diminution by reason of any distribution made during such taxable year or by reason of the tax under this subchapter or chapter 1 for such year and the determination shall be made without regard to the amount of earnings and profits at the time the distribution was made.

(4) [Not applicable to taxable years under these regulations (section 230 (c) and (d), Rev. Act 1942).]

(5) **DEFICIT IN EARNINGS AND PROFITS—EARNINGS AND PROFITS OF TRANSFEROR AND TRANSFeree.**—If a corporation (hereinafter called “transferor”) transfers substantially all its property to another corporation formed to acquire such property (hereinafter called “transferee”), if—

(A) the sole consideration for the transfer of such property is the transfer to the transferor or its shareholders of all the stock of all classes (except qualifying shares) of the transferee. (In determining whether the transfer is solely for stock, the assumption by the transferee of a liability of the transferor or the fact that the property acquired is subject to a liability shall be disregarded);

(B) the basis of the property, in the hands of the transferee, for the purposes of this subsection, is determined by reference to the basis of the property in the hands of the transferor;

(C) the transferor is forthwith completely liquidated in pursuance of the plan under which the acquisition of the property is made; and

(D) Immediately after the liquidation the shareholders of the transferor own all such stock;

for the purposes of this subchapter, in computing the equity invested capital for any day after the date of the acquisition of the property, the earnings and profits or deficit in earnings and profits of the transferee and the transferor shall be computed as if, immediately before the beginning of the taxable year in which such transfer occurs, the transferee had been in existence and sustained a recognized loss, and the transferor had realized a recognized gain, equal to the portion of the deficit in earnings and profits of the transferor attributable to such property.

(d) For special rules affecting computation of property paid in for stock in connection with certain exchanges and liquidations, see Supplement C.

(e) For determination of equity invested capital in special cases, see section 723.

(f) The reserves of an insurance company shall not be included in computing equity invested capital under this section but shall be treated as borrowed capital as provided in section 719.

SEC. 35.718-1 DETERMINATION OF DAILY EQUITY INVESTED CAPITAL—MONEY AND PROPERTY PAID IN.—The equity invested capital for any day is determined as of the beginning of such day. The basis or starting point is found in the amount of money and property previously paid in for stock, or as paid-in surplus, or as a contribution to capital. The terms "money paid in" and "property paid in" do not include amounts received as premiums by an insurance company subject to taxation under section 204. For the purpose of determining equity invested capital, the amount of any property paid in is the unadjusted basis to the taxpayer for determining loss upon a sale or exchange under the law applicable to the taxable year for which the invested capital is being computed. If the property was disposed of after February 28, 1913, and before such taxable year, such unadjusted basis shall be determined under the law applicable to the year of disposition, but without regard to the value of the property as of March 1, 1913; if the property was disposed of before March 1, 1913, its unadjusted basis shall be considered to be its fair market value at the time paid in.

If the basis to the taxpayer is cost and stock was issued for the property, the cost is the fair market value of such stock at the time of its issuance. If the stock had no established market value at the time of the exchange, the fair market value of the assets of the company at that time should be determined and the liabilities deducted. The resulting net worth will be deemed to represent the total value of the outstanding stock. In determining net worth for the purpose of fixing the fair market value of the stock at the time of the exchange, the property paid in for such stock shall be included in the assets at its fair market value at that time.

If stock having no established market value is issued for intangible property, and it is necessary to determine the fair market value of such property, the following factors, among others, may be taken into consideration in determining such value: (a) The earnings attributable to such intangible assets while in the hands of the predecessor owner; and (b) any cash offers for the purchase of the business, including the intangible property, at or about the time of its acquisition. A corporation claiming a value for intangible property paid in for stock should file with its return a full statement of the facts relating to such valuation.

If the property was acquired after December 31, 1920, by a corporation from a shareholder as paid-in surplus or from any person as a contribution to capital, then the basis shall be the same as it would be in the hands of the transferor if the transfer had not been made. (See section 113(a)(8).) If so acquired prior to January 1, 1921, the basis is the fair market value of the property at the time it was paid in. Where the basis is the transferor's basis, those adjustments shall be made to such basis with respect to the period before the property was paid in as are proper under section 115(1) for determining earnings and profits. Thus, if A paid into a corporation in 1930 as paid-in surplus certain improved real estate purchased by him in 1920 for \$20,000, with respect to which depreciation was allowed for the period held by him in amounts aggregating \$6,000 (the full amount allowable), A's basis of \$20,000 shall be reduced by \$6,000 for the purpose of computing the invested capital of the corporation.

The fact that the money or property paid in has been lost, destroyed, or otherwise disposed of shall not reduce the invested capital, except as such facts are reflected in the earnings and profits as of the beginning of the taxable year. As to cases with respect to which the equity invested capital at the beginning of the year can not be determined, see section 723. As to determination of amount of property paid in for stock in connection with certain exchanges, see section 760(b). As to determination of additional amount to be included in daily equity invested capital on account of new capital, see section 35.718-4.

See section 761 for rules for the elimination of duplication in invested capital as between two or more corporations.

SEC. 35.718-2 DETERMINATION OF DAILY EQUITY INVESTED CAPITAL—ACCUMULATED EARNINGS AND PROFITS.—(a) *In general.*—The term "accumulated earnings and profits" is not defined in the Internal Revenue Code. See, however, section 115 and the regulations prescribed thereunder as to the effect of certain transactions on earnings and profits, and section 35.718-5 as to the effect of the declaration and distribution of dividends. In general, the concept of "accumulated

earnings and profits" for the purpose of the excess profits tax is the same as for the purpose of the income tax. As to determination of additional amount to be included in daily equity invested capital on account of new capital, see section 35.718-4. In computing accumulated earnings and profits as of the beginning of the taxable year, a taxpayer keeping its books and making its income tax returns on the accrual basis shall subtract the income and excess profits taxes for the preceding taxable year. If there is a deficit in the accumulated earnings and profits as of the beginning of the taxable year, such deficit shall not be taken into account in determining invested capital, and in such cases the earnings and profits as of the beginning of the taxable year shall be considered as zero, but subsequent earnings and profits shall be applied against such deficit. Unrealized appreciation in value of property is not a factor in determining earnings and profits.

If the earnings and profits of another corporation have been included in the earnings and profits of the taxpayer by virtue of a transaction of the character referred to in section 718(b)(3), for the purpose of computing the equity invested capital of the taxpayer for each day after the day of such transaction there shall be included in the accumulated earnings and profits of the taxpayer as of the beginning of its taxable year in which such transaction occurred the proportionate part of any earnings and profits of the other corporation accumulated prior to the beginning of such taxable year and properly allocable to the taxpayer; and there shall be included in the current earnings and profits of the taxpayer for such taxable year the proportionate part of any earnings and profits of such other corporation accumulated after the beginning of such taxable year and properly allocable to the taxpayer. The amount so included in the earnings and profits of the taxpayer as of the beginning of its taxable year in which the transaction occurred or in its current earnings and profits for such year shall not exceed such proportionate part of the earnings and profits of such other corporation accumulated as of the day on which such transaction occurred.

If the transaction which resulted in the transfer to the taxpayer of the earnings and profits of another corporation constitutes an intercorporate liquidation subject to the provisions of section 761, the rule of the preceding paragraph shall apply only with respect to that portion of such earnings and profits attributable to the stock of such other corporation held by the taxpayer with a basis determined under section 761 to be a basis other than cost. Section 761(d)(1) provides for the adjustment appropriate with respect to the earnings and profits of such other corporation taken over in the liquidation attributable to the stock of such other corporation held by the taxpayer with a basis determined to be a cost basis.

(b) *Current earnings and profits.*—Earnings and profits of any taxable year can not be included in the computation of invested capital for that year. If a dividend is declared and paid during any year out of the earnings and profits of that year and the stockholders pay back into the corporation all or a substantial part of the amount of such dividends, the amount so paid back can not be included in the computation of invested capital for that year unless the corporation shows by evidence satisfactory to the Commissioner that the dividends were paid in good faith and without any understanding, express or implied, that they were to be paid back.

In any case in which the earnings and profits of another corporation are included in the accumulated earnings and profits of the taxpayer by reason of a transaction of the character referred to in section 718(b)(3), the proportionate part of any such earnings and profits accumulated after the beginning of the taxable year of the taxpayer in which such transaction occurred and allocable to the taxpayer, but in an amount not to exceed the proportionate part of the earnings and profits of such other corporation accumulated as of the day of such transaction, shall be considered to be current earnings of the taxpayer for such taxable year.

The earnings and profits for the taxable year in which an intercorporate liquidation has occurred subject to the provisions of section 761 shall be increased or decreased, as the case may be, by the plus adjustment or the minus adjustment computed under section 761(b) with respect to the stock of the liquidated corporation held by the taxpayer with a basis determined under section 761 to be a cost basis. See section 761(d)(1).

SEC. 35.718-3 DETERMINATION OF DAILY EQUITY INVESTED CAPITAL—DISTRIBUTIONS IN STOCK.—A distribution made prior to the taxable year by a corporation in its stock, or in rights to acquire its stock, to the extent to which it constitutes a distribution of earnings and profits of the corporation, constitutes an item of invested capital. Such a distribution made during the taxable year out of earnings and profits other than out of the earnings and profits of that year is also an item of invested capital. If a stock dividend is paid out of capital and not out of earnings and profits, or is of such a character as not to be subject to tax in the hands of a distributee because exempt as a stock dividend either by statute or otherwise, it is not deemed to constitute a distribution and does not reduce the earnings and profits account. See section 115(h). For new capital treatment of distributions in stock, see section 35.718-4.

SEC. 35.718-4 DETERMINATION OF DAILY EQUITY INVESTED CAPITAL—NEW CAPITAL.—(a) *In general.*—The equity invested capital for any day of the taxable year, as partially determined under section 718(a)

(1) to (4), shall be increased by an amount equal to 25 percent of the new capital, if any, for such day. The term "new capital" for any such day means the aggregate amount of money and property paid in for stock, or as paid-in surplus, or as a contribution to capital, and the amount of distributions made in stock and includible for such day under section 718(a) (1) to (3), subject, however, to the limitations provided in subparagraphs (A) to (F) of section 718(a) (6).

(b) *Limitations under subparagraph (A) of section 718(a)(6).*—The limitations provided in subparagraph (A) of section 718(a)(6) exclude from the term "new capital" the amount of any equity invested capital acquired in an exchange occurring during a taxable year beginning after December 31, 1940, to which section 112(b)(3), (4), or (5), or so much of section 112(c), (d), or (e) as refers to section 112(b)(3), (4), or (5), is applicable. However, in determining whether an exchange is within section 112(b)(3), (4), or (5), or so much of section 112(c), (d), or (e) as refers to section 112(b)(3), (4), or (5), the control requirement is considered to mean the ownership of stock possessing more than 50 per cent of the total combined voting power of all classes of stock entitled to vote or more than 50 per cent of the total value of shares of all classes of stock. These limitations also apply to all exchanges under Supplement R of Chapter 1 which would be subject to the statutory provisions referred to in the preceding sentence if it were not for section 371(g). The application of these limitations may be illustrated by the following example:

Example. The A Corporation issues stock during the taxable year beginning on January 1, 1942, to the B Corporation in exchange for the transfer of certain property by the B Corporation. Immediately after the transfer the stock acquired by the B Corporation has a value of \$10,000, the total value of all classes of stock of the A Corporation then outstanding amounting to \$18,000. The A Corporation obtains no new capital, since the property for which the new stock was issued was obtained in an exchange to which section 112(b)(5) would be applicable if the term "control" had been defined in section 112(h) so as to include either the ownership of stock possessing more than 50 per cent of the total combined voting power of all classes of stock entitled to vote or more than 50 per cent of the total value of all classes of stock outstanding.

(c) *Limitations under subparagraph (B) of section 718(a)(6).*—The limitations provided in subparagraph (B) of section 718(a)(6) exclude from the term "new capital" any money or property paid in to the taxpayer by a transferor corporation if immediately after such transaction the transferor and the taxpayer are members of the same controlled group as that term is defined in such subparagraph. The application of these limitations may be illustrated by the following example:

Example. The A Corporation owns stock in the B Corporation, and the B Corporation owns stock in the C Corporation. The A Corporation transfers property to the C Corporation in exchange for stock of the C Corporation. Immediately after the transfer the stock owned by the A Corporation in the B Corporation possesses more than 50 per cent of the total combined voting power of all classes of stock entitled to vote. Also immediately after such transfer the stock owned by the B Corporation in the C Corporation has a value equal to more than 50 percent of the total value of all classes of stock of the C Corporation. The C Corporation obtains no new capital through the acquisition of the property from the A Corporation in exchange for its stock, since immediately after the transfer the A Corporation, the transferor, and the C Corporation, the transferee, are members of the same controlled group.

(d) *Limitations under subparagraph (C) of section 718(a)(6).*—The limitations provided in subparagraph (C) of section 718(a)(6) exclude from the term “new capital” any distribution in stock described in section 718(a)(3) made by the taxpayer to another corporation if immediately after the distribution the taxpayer and the other corporation are members of the same controlled group as that term is defined in subparagraph (B) of section 718(a)(6). The application of these limitations may be illustrated by the following example:

Example. The A Corporation makes a distribution in taxable stock dividends to the B and C Corporations during the taxable year beginning on January 1, 1942. Immediately after the distribution the B and C Corporations own stock in the A Corporation which has a voting power of more than 50 per cent of the combined voting power of all classes of stock entitled to vote. Also immediately after the transfer the B Corporation owns stock in the C Corporation which has a value of more than 50 per cent of the total value of all classes of stock of the C Corporation. The taxable stock dividend distributed by the A Corporation does not constitute new capital to the A Corporation.

(e) *Limitations under subparagraph (D) of section 718(a)(6).*—The limitations provided in subparagraph (D) of section 718(a)(6) require that the amount of new capital for any day of the taxable year, computed without the application of section 718(a)(6)(E), shall be reduced by the excess of the amount of inadmissible assets held on the beginning of that day over the amount of such assets held on the beginning of the first day of the taxpayer's first taxable year beginning after December 31, 1940. The application of these limitations may be illustrated by the following example:

Example. The X Corporation makes its excess profits tax return on the calendar year basis. On July 1, 1942, cash in the amount of

\$100,000 is paid in for stock. There are no other changes made in either the amount of equity invested capital or the amount of borrowed capital at any time during the year 1942. The adjusted basis of inadmissible assets as of January 1, 1941, amounts to \$5,000. The adjusted basis of such assets as of July 2, 1942, is \$15,000. Under subparagraph (D) the new capital of \$100,000 is reduced to \$90,000 as of July 2, 1942, as shown by the following computation:

Money paid in for stock July 1, 1942.....	\$100,000
Less:	
Excess of inadmissible assets as of July 2, 1942, over such assets as of January 1, 1941 (\$15,000 minus \$5,000).....	10,000
New capital as reduced under subparagraph (D).....	90,000

(f) *Limitations under subparagraph (E) of section 718(a)(6).*—The limitations provided in subparagraph (E) of section 718(a)(6) prevent new capital as of any day from exceeding the amount by which the total equity invested capital and borrowed capital as of such day (computed without including the 25 per cent increase and reduced as provided in such subparagraph on account of amounts excluded under subparagraph (A) or (B)) exceeds the sum of the equity invested capital and borrowed capital as of the first day of the taxpayer's first taxable year beginning after December 31, 1940 (reduced as provided in such subparagraph on account of reduction in accumulated earnings and profits other than as the result of distributions). The application of these limitations may be illustrated by the following example:

Example. The Y Corporation makes its return on the calendar year basis. Its equity invested capital as of January 1, 1941, amounts to \$30,000, consisting of money paid in for stock, \$20,000, and accumulated earnings and profits, \$10,000. Its borrowed capital as of January 1, 1941, consists of bonds outstanding in the amount of \$15,000. Accordingly, the total of its equity invested capital and borrowed capital as of January 1, 1941, is \$45,000. The corporation has no inadmissible assets at any time during the year 1941 or 1942. No changes in its equity invested capital or borrowed capital occur in 1941. On July 1, 1942, the following events occur:

(1) The corporation distributes taxable stock dividends amounting to \$5,000 out of earnings and profits accumulated prior to January 1, 1941;

(2) Money amounting to \$15,000 is paid in as a contribution to capital;

(3) Property with an unadjusted basis of \$20,000 for determining loss is acquired for stock in an exchange to which section 112(b)(4) is applicable; and

(4) Bonds in the amount of \$10,000 are retired.

Only \$5,000 of the \$40,000 of new capital (tentative) arising out of the transactions which took place on July 1, 1942, constitutes new capital as of July 2, 1942, computed as follows:

(1) Sum of equity invested capital and borrowed capital as of July 2, 1942 (computed without regard to 25 percent increase in new capital)	\$70,000
(2) Property paid in for stock excluded under subparagraph (A)	20,000
(3) Item (1) minus item (2)	50,000
(4) Sum of equity invested capital and borrowed capital as of January 1, 1941	45,000
(5) New capital as of July 2, 1942 (item (3) minus item (4))	5,000

If the accumulated earnings and profits of the Y Corporation are reduced to zero as of January 1, 1943, because of the stock dividend distribution of \$5,000 made on July 1, 1942, and because of an operating loss of \$5,000 during the taxable year 1942, the new capital includible in equity invested capital as of January 1, 1943, would remain at \$5,000 under the application of subparagraph (E), as shown by the following computation:

(1) Sum of equity invested capital and borrowed capital as of January 1, 1943 (computed without regard to 25 percent increase in new capital)	\$65,000
(2) Property paid in for stock excluded under subparagraph (A)	20,000
(3) Item (1) minus item (2)	45,000
(4) Sum of equity invested capital and borrowed capital as of January 1, 1941	45,000
(5) Excess of accumulated earnings and profits as of January 1, 1941, over earnings and profits, computed without regard to distributions, as of January 1, 1943 (\$10,000 minus \$5,000)	5,000
(6) Item (4) reduced by item (5)	40,000
(7) New capital as of January 1, 1942 (item (3) minus item (6))	5,000

¹ The application of subparagraph (F) is not shown in the above computation since it does not change the result.

(g) *Limitations under subparagraph (F) of section 718(a)(6).*—The limitations provided in subparagraph (F) of section 718(a)(6) require that new capital for any day of the taxable year (computed without the application of subparagraph (E)), shall be reduced by distributions made after the beginning of the first taxable year which begins after December 31, 1940, out of earnings and profits accumulated prior to the beginning of such first taxable year. The application of these limitations may be illustrated by the following examples:

Example (1). The Z Corporation makes its return on the calendar year basis. Its total equity invested capital and borrowed capital as

of January 1, 1941, is \$100,000, including \$10,000 of accumulated earnings and profits. No changes occur in its equity invested capital or borrowed capital during 1941. The only capital acquired during 1942 amounts to \$10,000, resulting from the distribution of a taxable stock dividend on July 1, 1942. The corporation has no earnings and profits for 1942. The capital resulting from the stock dividend is excluded from new capital by subparagraph (F) (as well as by subparagraph (E)), for it is reduced by the amount distributed out of earnings and profits accumulated prior to January 1, 1941.

Example (2). Assume that the facts with respect to the Z Corporation are the same as in example (1), except that the Z Corporation has an operating loss of \$10,000 for the year 1942. Although under subparagraph (E), because of the adjustment relative to a reduction in accumulated earnings and profits not resulting from distributions, there would be new capital as of January 1, 1942, in the amount of \$10,000, the application of subparagraph (F) prevents the stock dividend distributed on July 1, 1942, from being new capital, inasmuch as the capital from the stock dividend (\$10,000) must be reduced by the amount of the distribution out of earnings and profits accumulated prior to January 1, 1941 (\$10,000).

Example (3). Assume that the facts with respect to the Z Corporation are the same as in example (1), except that there are no earnings and profits in 1942 and no operating loss for such year and that its earnings and profits for 1943 are \$10,000. Although, because of the 1943 earnings and profits, there would be new capital under subparagraph (E) in the amount of \$10,000 as of January 1, 1944, subparagraph (F) prevents the stock dividend distributed on July 1, 1942, from being new capital, inasmuch as the capital resulting from such stock dividend (\$10,000) is reduced by the amount of the distribution (\$10,000) made out of earnings and profits accumulated prior to January 1, 1941.

SEC. 35.718-5 DETERMINATION OF DAILY EQUITY INVESTED CAPITAL—REDUCTIONS BY DISTRIBUTIONS.—The amount of the daily equity invested capital as partially determined by taking the aggregate of the sums described in section 718 (a) shall be reduced by the amount of the distributions made in prior taxable years which were not out of accumulated earnings and profits plus the amount of the distributions previously made during the taxable year which were not out of the earnings or profits of such year. In determining whether a distribution is out of the earnings and profits of any taxable year, such earnings and profits shall be computed as of the close of such taxable year without diminution by reason of any distribution made during such taxable year or by reason of the excess profits tax imposed by the Excess Profits Tax Act of 1940, or by reason of the tax im-

posed by Chapter 1, and without regard to the amount of earnings and profits at the time the distribution was made.

For example, if a corporation making a return on the calendar year basis had accumulated earnings and profits as of the beginning of the taxable year of \$50,000, and earnings and profits during the taxable year (without diminution by any distributions, the excess profits tax for the taxable year, or the income tax for the taxable year) of \$150,000, all earned during the last six months of the taxable year, and distributed \$175,000 as dividends during the taxable year, \$56,000 on April 1, \$70,000 on July 1, and \$49,000 on October 1, six-sevenths of each distribution will be deemed to have been paid out of earnings of the taxable year and one-seventh from accumulated earnings and profits, so that accumulated earnings and profits will be reduced by \$8,000 beginning April 2, by an additional \$10,000 beginning July 2, and by an additional \$7,000 beginning October 2.

In computing accumulated earnings and profits as of the beginning of the taxable year and in determining what distributions during the taxable year are made out of the earnings and profits of such year, for the purposes of section 718 (a) and (b) distributions made during the first 60 days of any taxable year are deemed, to the extent they do not exceed the accumulated earnings and profits as of the beginning of the taxable year, to have been made on the last day of the preceding taxable year. In applying such rule, such distributions shall be considered in the order of time. For example, if a corporation on the calendar year basis has accumulated earnings or profits of \$100,000 on January 1, 1942, and makes distributions of \$75,000 on January 15, 1942, and \$50,000 on February 15, 1942, the distribution of January 15, 1942, and \$25,000 of the distribution of February 15, 1942, are considered as having been made on December 31, 1941.

A distribution is considered to be made on the date it is payable, except that where no date is set for its payment, the distribution is considered to be made on the date when it is declared, and except that distributions payable during the first 60 days of a taxable year are considered to be distributions made on the last day of the preceding taxable year to the extent such distributions do not exceed the accumulated earnings and profits as of the beginning of the taxable year.

The purchase by a corporation of its own stock for investment does not of itself result in a reduction of invested capital. But see section 35.720-1 relative to inadmissible assets. If, however, the corporation subsequently cancels such stock, invested capital is reduced, beginning with the day following such cancellation, by so much of the adjusted basis of such stock in the hands of the corporation as is not properly chargeable to earnings and profits of the taxable year. If stock is purchased for retirement, there is a distribution on the date of pur-

chase of the amount paid therefor and the invested capital is reduced by the amount thereof not properly chargeable to earnings and profits of the taxable year.

The amount of distributions by a corporation whether in bonds of such corporation, or in money or other property may exceed the amount of the equity invested capital computed without regard to such distributions. In such event, the equity invested capital of such corporation shall be reduced by virtue of such distributions to a negative amount.

SEC. 35.718-6 DETERMINATION OF DAILY EQUITY INVESTED CAPITAL—REDUCTION BY EARNINGS AND PROFITS OF ANOTHER CORPORATION.—Section 718(b)(3) provides for the elimination of the duplication which occurs in the computation of the equity invested capital of the taxpayer following a transaction of the character referred to therein, as a result of which the earnings and profits of another corporation became the earnings and profits of the taxpayer.¹ The earnings and profits of such other corporation having been included at the time of the transaction in the earnings and profits of the taxpayer, they remain continuously thereafter a part of such earnings and profits account for the purpose of computing for any day after such transaction the earnings and profits, the accumulated earnings and profits at the beginning of the taxable year, and the earnings and profits of the taxable year. In addition, however, the amount of such included earnings and profits is also brought into computation of equity invested capital of the taxpayer under provisions of section 718 other than section 718(a)(4) relating to accumulated earnings and profits as of the beginning of the taxable year. Thus, if the transaction is a reorganization to which section 113(a)(7) is applicable, and in which the taxpayer receives all the assets of another corporation in exchange solely for its own stock, such amount has already been taken into account in property paid in for stock under section 718(a)(2); or if the transaction is an intercorporate liquidation of another corporation involving a distribution with respect to stock of such other corporation held by the taxpayer with a basis determined under section 761 to be a basis other than cost, such amount has already been taken into account in the computation of equity invested capital of the taxpayer, as adjusted under section 761(d)(2).

To preclude this duplicate inclusion of the earnings and profits of another corporation in the invested capital of the taxpayer, section 718(b)(3) provides, as a step in the computation of equity invested capital, for the reduction of equity invested capital otherwise computed by the amount of earnings and profits of another corporation previously at any time included in the earnings and profits of the

¹ *Commissioner v. Sansome*, 60 Fed. (2d) 931.

taxpayer. This adjustment is to be made in the computation of equity invested capital for each day after the day of such transaction, regardless of whether the earnings and profits absorbed were produced during the taxable year of the taxpayer in which such transaction occurred or in a prior taxable year, and regardless of the condition of the earnings and profits account of the taxpayer immediately prior to or at any time subsequent to the date of such transaction.

SEC. 35.718-7 DETERMINATION OF DAILY EQUITY INVESTED CAPITAL—DEFICIT IN EARNINGS AND PROFITS OF TRANSFEROR TRANSFERRED TO TRANSFEREE.—The determination of the amount of money or property paid in for stock or as paid-in surplus or as a contribution to capital of the transferee on account of certain tax-free exchanges is prescribed by section 760. (The determination with respect to excess profits tax taxable years beginning prior to January 1, 1942, is also prescribed by section 760 if the taxpayer elects, pursuant to the provisions of section 230(d) of the Revenue Act of 1942, to have the provisions of section 760 apply.) Such amount of property paid in is computed with respect to the unadjusted basis for determining loss of the property in the hands of the transferee, adjusted for the period prior to the time the property was paid in by amounts equal to the adjustments proper under section 115(1) for determining earnings and profits, minus, *inter alia*, any liability of the transferor assumed upon the exchange or to which the property received was subject. Since the unadjusted basis of the property received minus any liabilities assumed by the transferee or to which the property received was subject, will reflect the amount of any deficit incurred by the transferor, the equity invested capital of the transferee resulting from the exchange would be reduced by the amount of such deficit, although the amount of such deficit would not have reduced the equity invested capital of the transferor, prior to the exchange, below the amount of its accumulated earnings and profits.

In certain cases where, despite a reorganization of the transferor involving a tax-free exchange of its assets, the corporate identity of the transferor is preserved, section 718(a)(7) provides that equity invested capital of the transferee for taxable years beginning after December 31, 1939, shall be increased by that portion of the deficit in earnings and profits of the transferor attributable to the property transferred by the transferor to the transferee. Section 718(b)(5) provides for the complementary reduction in the equity invested capital of the transferor for any day after such a transfer in taxable years beginning after December 31, 1939, by the amount of the deficit in earnings and profits attributable to the property transferred.

If the transferee has received substantially all, but not all, the property of the transferor upon the exchange, the deficit in earnings and profits of the transferor attributable to the property transferred

shall be an amount which bears the same ratio to the total deficit in earnings and profits of the transferor as the excess of the basis of the property transferred to the transferee (adjusted by amounts equal to the adjustments proper under section 115(1) for determining earnings and profits) over the amount of any liability of the transferor assumed upon the exchange and of any liability subject to which such property was so received bears to the excess of the basis of the total assets of the transferor immediately prior to the exchange (adjusted by amounts equal to the adjustments proper under section 115(1) for determining earnings and profits) over the amount of any liability of the transferor, and the amount of any liability subject to which such assets were held immediately prior to the transfer.

The adjustments provided by section 718(a)(7) and section 718(b)(5) are applicable only in case a corporation (called the transferor) transfers substantially all its property to another corporation formed especially to acquire such property (called the transferee), provided that—

(a) the sole consideration for the transfer of such property is the transfer to the transferor or its shareholders of all the stock of all classes (except qualifying shares) of the transferee. In determining whether the transfer is solely for stock, the assumption by the transferee of a liability of the transferor or the fact that the property acquired was received subject to a liability shall be disregarded;

(b) the basis of the property in the hands of the transferee is determined by reference to the basis of such property in the hands of the transferor;

(c) the transferor is forthwith completely liquidated in pursuance of the plan under which the acquisition of the property was made; and

(d) immediately after such liquidation the shareholders of the transferor own all the stock of the transferee received by the transferor.

The earnings and profits of the transferee for any day after the date of acquisition of the property shall be considered to have been reduced by an amount equal to the amount by which the equity invested capital was increased pursuant to section 718(a)(7), as if immediately before the beginning of the taxable year in which such transfer occurred the transferee had been in existence and had sustained a recognized loss equal to the portion of the deficit in earnings and profits of the transferor attributable to the property acquired by the transferee. The deficit in earnings and profits of the transferor for any day after the date of the transfer of property, and prior to the liquidation, must be decreased by the amount by which the equity

invested capital is decreased pursuant to section 718(b)(5), as if immediately before the beginning of the taxable year in which the transfer occurred the transferor had realized a recognized gain equal to the portion of the deficit in earnings and profits of the transferor attributable to the property transferred to the transferee.

The provisions of section 718(a)(7), section 718(b)(5); and section 718(c)(5) shall apply only in the case of a tax-free exchange involving a single transferor and shall not apply to instances where two or more transferors transfer property to a transferee in a tax-free exchange.

The provisions of this section may be illustrated by the following example:

Example. In 1942 Corporation A, which was organized under the laws of the State of New York, found it necessary to incorporate under the laws of Delaware. Consequently a new Corporation B was organized under the laws of Delaware, and in exchange for all its stock received the entire assets of Corporation A. Immediately after the exchange Corporation A was liquidated, and the stock of Corporation B was transferred to the shareholders of Corporation A. Immediately prior to the exchange, the equity invested capital of Corporation A, consisting of money and property previously paid in for stock, was \$500,000; in addition, Corporation A had a deficit in earnings and profits of \$200,000. The adjusted basis of the assets of Corporation A at the time of the exchange properly adjusted under section 115(1) for the computation of earnings and profits, and consequently the unadjusted basis of the assets to Corporation B at such time was \$300,000. The equity invested capital of Corporation B, however, as of January 1, 1943, is \$500,000, since section 718(a)(7) requires the addition of Corporation A's \$200,000 deficit to the equity invested capital of Corporation B, otherwise determined. As of January 1, 1943, Corporation B is also considered to have a deficit in earnings and profits of \$200,000. If in 1943 Corporation B had earned \$150,000, its equity invested capital as of January 1, 1944, would be \$500,000 and its deficit in earnings and profits would be \$50,000 (\$200,000 minus \$150,000). If in 1944 Corporation B had earned \$75,000, its equity invested capital as of January 1, 1945, would be \$525,000 (\$500,000 plus \$25,000 accumulated earnings and profits (\$150,000 plus \$75,000, minus \$200,000)). Immediately after the exchange the equity invested capital of Corporation A would be \$300,000 since section 718(b)(5) requires the reduction of Corporation A's invested capital by the amount of any deficit in earnings and profits transferred to the transferee pursuant to the provisions of section 718(c)(5), and Corporation A's deficit in earnings and profits computed pursuant to section 718(c)(5) would be zero (\$200,000 minus \$200,000).

SEC. 35.718-8 DETERMINATION OF DAILY EQUITY INVESTED CAPITAL—INSURANCE COMPANIES.—Section 718(f) provides that the reserves of certain insurance companies shall not be included in computing equity invested capital but shall be treated as borrowed capital as provided in section 719. This rule does not apply to the computation of invested capital of mutual insurance companies other than life or marine, the reserves of which would not be included in equity invested capital under section 718 (see section 718(e)) but are included only in equity invested capital as provided in section 723(b).

SEC. 719. BORROWED INVESTED CAPITAL. [ADDED BY SEC. 201, SECOND REV. ACT 1940; AMENDED BY SECS. 205(e) AND 230(b), REV. ACT 1942.]

(a) **BORROWED CAPITAL.**—The borrowed capital for any day of any taxable year shall be determined as of the beginning of such day and shall be the sum of the following:

(1) The amount of the outstanding indebtedness (not including interest) of the taxpayer which is evidenced by a bond, note, bill of exchange, debenture, certificate of indebtedness, mortgage, or deed of trust, plus,

(2) In the case of a taxpayer having a contract (made before the expiration of 30 days after the date of the enactment of the Second Revenue Act of 1940) with a foreign government to furnish articles, materials, or supplies to such foreign government, if such contract provides for advance payment and for repayment by the vendor of any part of such advance payment upon cancellation of the contract by such foreign government, the amount which would be required to be so repaid if cancellation occurred at the beginning of such day, but no amount shall be considered as borrowed capital under this paragraph which has been includible in gross income, plus,

(3) In the case of an insurance company, the mean of the amount of the pro rata unearned premiums determined at the beginning and end of the taxable year, plus,

(4) In the case of a life insurance company, the mean of the amount of the adjusted reserves, and the mean of the amount of the reserves on insurance or annuity contracts (or contracts arising out of insurance or annuity contracts) which do not involve, at the time with reference to which the computation was made, life, health, or accident contingencies, determined at the beginning and end of the taxable year.

(b) **BORROWED INVESTED CAPITAL.**—The borrowed invested capital for any day of any taxable year shall be determined as of the beginning of such day and shall be an amount equal to 50 per centum of the borrowed capital for such day.

SEC. 35.719-1 BORROWED INVESTED CAPITAL.—The borrowed invested capital for any day of the taxable year is 50 per cent of the borrowed capital for such day determined as of the beginning of such day. Borrowed capital is defined to mean:

(a) Outstanding indebtedness (other than interest, but including indebtedness assumed or to which the taxpayer's property is subject) of the taxpayer which is evidenced by a bond, a promissory note, bill of exchange, debenture, certificate of indebtedness, mortgage, or deed of trust, plus

(b) In the case of a corporation having a contract, made before November 8, 1940, with a foreign government to furnish articles, materials, or supplies to such foreign government, amounts received as advance payment in connection with and as provided by such contract, to the extent such amounts would be repayable pursuant to the terms of the contract, if cancellation by such foreign government occurred at the beginning of the day for which the borrowed capital is being ascertained, but no amount shall be included as borrowed capital which has been includible in gross income, plus

(c) In the case of an insurance company (except a mutual insurance company other than life or marine), the mean of the amount of the pro rata unearned premiums (see section 204(b)(5) and section 29.204-2 of Regulations 111) determined at the beginning and end of the taxable year, plus

(d) In the case of a life insurance company, for any taxable year beginning after December 31, 1941, the mean of the amount of the adjusted reserves (see section 201(c)(3) and section 29.201-6 of Regulations 111) and the mean of the amount of the reserves on insurance or annuity contracts (or contracts arising out of insurance or annuity contracts) which do not involve, at the time with reference to which the computation was made, life, health, or accident contingencies, determined at the beginning and end of the taxable year.

The provisions of section 719(a) (3) and (4) do not apply to mutual insurance companies other than life or marine. For computation of equity invested capital in the case of such corporations, see section 723(b) and section 35.723-2.

In order for any indebtedness to be included in borrowed capital it must be bona fide. It must be one incurred for business reasons and not merely to increase the excess profits credit. If indebtedness of the taxpayer is assumed by another person it ceases to be borrowed capital of the taxpayer. For such purpose an assumption of indebtedness includes the receipt of property subject to indebtedness.

Whether outstanding certificates designated by such names as "debenture preferred stock" or "guaranteed preferred stock" constitute borrowed capital depends upon whether the holder has a proprietary interest in the corporation or has the rights of a creditor, determined in the light of all the facts. The name borne by the certificate is of little importance. More important attributes to be considered are whether or not there is a maturity date, the source of payment of any "interest" or "dividend" specified in the certificate (whether only out

of earnings or out of capital and earnings), rights to enforce payment, and other rights as compared with those of general creditors.

The term "certificate of indebtedness" includes only instruments having the general character of investment securities issued by a corporation as distinguishable from instruments evidencing debts arising in ordinary transactions between individuals. Borrowed capital does not include indebtedness incurred by a bank arising out of the receipt of a deposit and evidenced, for example, by a certificate of deposit, a passbook, a cashier's check, or a certified check.

The provisions of section 719(a)(2) relating to contracts with a foreign government may be illustrated by the following example:

Example. The X Corporation, which makes its income tax returns on the calendar year basis and reports its income on the accrual basis, entered into a contract with a foreign government on November 1, 1940, for the manufacture and delivery of certain parts for aircraft, and received thereunder an advance payment as of that date of \$500,000. The contract provided for its cancellation by the vendee, and further provided that the advance payment should be returned upon such cancellation less the sum of \$100,000 and \$5,000 for each unit delivered before cancellation. No units were delivered during 1940 or 1941. Ten units were delivered December 1, 1942, another 10 units December 30, 1942, and the contract was canceled December 31, 1942, before any other deliveries had been made. Borrowed invested capital would be increased \$200,000 (50 percent of \$400,000) for each day beginning January 1, 1942, and ending December 1, 1942; \$175,000 (50 percent of \$350,000) for each day beginning December 2, 1942, and ending December 30, 1942; and \$150,000 (50 percent of \$300,000) for one day, December 31, 1942.

SEC. 720. ADMISSIBLE AND INADMISSIBLE ASSETS. [ADDED BY SEC. 201, SECOND REV. ACT 1940; AMENDED BY SEC. 12(a), EXCESS PROFITS TAX AMENDMENTS 1941, AND BY SECS. 207(h) AND 220, REV. ACT 1942.]

(a) **DEFINITIONS.**—For the purposes of this subchapter—

(1) The term "inadmissible assets" means—

(A) Stock in corporations except stock in a foreign personal-holding company, and except stock which is not a capital asset; and

(B) Except as provided in subsection (d), obligations described in section 22(b)(4) any part of the interest from which is excludible from gross income or allowable as a credit against net income.

(2) The term "admissible assets" means all assets other than inadmissible assets.

(b) **RATIO OF INADMISSIBLES TO TOTAL ASSETS.**—The amount by which the average invested capital for any taxable year shall be reduced as provided in section 715 shall be an amount which is the same per-

centage of such average invested capital as the percentage which the total of the inadmissible assets is of the total of admissible and inadmissible assets. For such purposes, the amount attributable to each asset held at any time during such taxable year shall be determined by ascertaining the adjusted basis thereof (or, in the case of money, the amount thereof) for each day of such taxable year so held and adding such daily amounts. The determination of such daily amounts shall be made under regulations prescribed by the Commissioner with the approval of the Secretary. The adjusted basis shall be the adjusted basis for determining loss upon sale or exchange as determined under section 113.

(c) **COMPUTATION IF SHORT-TERM CAPITAL GAIN.**—If during the taxable year there has been a gain from the sale or exchange of a capital asset held for not more than 6 months with respect to an inadmissible asset, then so much of the amount attributable to such inadmissible asset under subsection (b) as bears the same ratio thereto as such gain bears to the sum of such gain plus the dividends and interest on such asset for such year, shall, for the purpose of determining the ratio of inadmissible assets to the total of admissible and inadmissible assets, be added to the total of admissible assets and subtracted from the total of inadmissible assets.

(d) **TREATMENT OF GOVERNMENT OBLIGATIONS AS ADMISSIBLE ASSETS.**—If the excess profits credit for any taxable year is computed under section 714, the taxpayer may in its return for such year elect to increase its normal-tax net income for such taxable year by an amount equal to the amount of the interest on, reduced by the amount of the amortizable bond premium under section 125 attributable to, all obligations held during the taxable year which are described in section 22(b)(4) any part of the interest from which is excludible from gross income or allowable as a credit against net income. In such case, for the purposes of this section, the term "admissible assets" includes such obligations, and the term "inadmissible assets" does not include such obligations.

SEC. 35.720-1 REDUCTION OF AVERAGE INVESTED CAPITAL FOR INADMISSIBLE ASSETS.—If a taxpayer owns any "inadmissible assets" on any day during the taxable year, then section 715 relating to the computation of invested capital requires the average invested capital to be reduced in the same ratio as the inadmissible assets bear to the total assets. The term "inadmissible assets" means (1) stock in all corporations, domestic or foreign, except stock in a foreign personal holding company, and except stock which is not a capital asset (such as stock held primarily for sale to customers by a dealer in securities), and (2) all obligations described in section 22(b)(4), any part of the interest from which is excludible from gross income or allowable as a credit against net income. Stock held in the treasury of the issuing corporation is an inadmissible asset. The term "admissible assets" means all assets other than inadmissible assets. However, if a taxpayer in its return for the taxable year elects to increase its normal-tax net income for that year for the purpose of the excess profits tax by including all the interest derived from the obligations described in section

22(b)(4), reduced by the amount, if any, of the amortizable bond premium under section 125 attributable to such obligations (see section 29.125-1 of Regulations 111), all such obligations shall be considered admissible assets for such taxable year. For the purposes of the preceding sentence, (A) the term "interest" includes, in the case of obligations issued at a discount, so much of such discount as (for purposes of determining gain or loss upon sale or other disposition) is treated as interest in the hands of the taxpayer for the taxable year, and (B) the term "obligations described in section 22(b)(4)" includes obligations, whether or not issued at a discount, the discount on which, if issued at a discount, would be so treated. The following steps are necessary in the application of section 720:

(a) There must first be determined the adjusted basis for determining loss upon the sale or exchange, as provided in section 113, for each asset, or, in the case of money, the amount thereof, owned at the beginning of each day during the taxable year.

(b) There must then be determined the aggregate of the admissible assets and the aggregate of the inadmissible assets for the taxable year.

(c) The average invested capital for the taxable year must then be reduced by the percentage which the total of the inadmissible assets is of the total of the admissible and inadmissible assets.

If the taxpayer had a gain during the taxable year from the sale or exchange of a capital asset held for not more than six months, which capital asset was an inadmissible asset, then the amount of the admissible assets shall be increased and the amount of the inadmissible assets shall be decreased by so much of the amount attributable to such inadmissible asset as such gain bears to the sum of such gain plus the dividends or interest on such asset for such year.

The amount of admissible assets and the amount of inadmissible assets shall be determined as of the beginning of each day. If, however, it is impracticable to determine such amounts as of the beginning of each day but the amounts held on a given day of each month throughout the year or at other regular intervals not exceeding one year can be determined, the amounts held as of the beginning of each day of such month or other period may be determined by dividing by two the sum of the amounts of such assets held at the beginning of the period and the amounts held at the end of the period. If at any time a substantial change has taken place either in the amount of inadmissible assets or in the total amount of admissible and inadmissible assets, the effect of such change shall be averaged exactly from the date on which it occurred. Ordinarily the taxpayer will be able to determine the amount of inadmissible assets actually held on each day of the taxable year. The fact that it may be impracticable to determine the amount of admissible assets actually held on each day of the taxable

year will not relieve the taxpayer from the necessity of determining the actual amount of inadmissible assets held unless such determination is likewise impracticable.

The adjustment for inadmissible assets may be illustrated by the following example:

Example. The average invested capital of the X Corporation, not a dealer in securities, for its taxable year 1944, determined under section 716, is \$1,000,000. On January 1, 1944, the corporation holds bonds of a State which it had previously purchased for \$60,000, and stock in another corporation (not a foreign personal holding company) which it had previously purchased for \$25,000. On July 1, 1944, it purchases stock in another corporation (not a foreign personal holding company) for \$20,000, and on July 4, 1944, additional State bonds for \$48,700. On September 1, 1944, it sells for \$29,000 the stock purchased on July 1, 1944, after receiving a dividend of \$1,000 thereon. The aggregate of the daily amounts of the admissible and inadmissible assets for the taxable year 1944 is \$400,000,000. The corporation does not elect to increase its normal-tax net income for excess profits tax purposes by the amount of the interest derived from the State bonds. None of the bonds was purchased at a premium.

The invested capital of the X Corporation as defined in section 715 is \$900,000, computed as follows:

Average invested capital for 1944-----	\$1, 000, 000
Less:	
Amount computed under section 720 for inadmissible assets (10 percent of \$1,000,000, see Schedule I below)-----	100, 000
Invested capital for 1944 as defined in section 715-----	900, 000

Schedule I

(a) Aggregate of the daily amounts of inadmissible assets for the year 1944 before adjustment for short-term capital gain:

(1) State bonds held January 1, 1944 (\$60,000 multiplied by 366 (days))-----	\$21, 960, 000
(2) State bonds purchased July 4, 1944 (\$48,700 multiplied by 180 (days))-----	8, 766, 000
(3) Stock in domestic corporation held January 1, 1944 (\$25,000 multiplied by 366 (days))--	9, 150, 000
(4) Stock in domestic corporation purchased July 1, 1944, for \$20,000 and sold September 1, 1944, for \$29,000 (\$20,000 multiplied by 62 (days))-----	1, 240, 000
	<hr/> \$41, 116, 000

(b) Less:

Adjustment on account of short-term capital gain (see Schedule II below)-----	1, 116, 000
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(c) Aggregate of the daily amounts of the inadmissible assets after adjustment for short-term capital gain (item (a) minus item (b))-----

40, 000, 000

- (d) Aggregate of the daily amounts of admissible and inadmissible assets for the year 1944 (this item being unaffected by the adjustment on account of the short-term capital gain) ----- \$400,000,000
- (e) Ratio of aggregate of daily amounts of inadmissible assets (item (c) above) to aggregate of daily amounts of admissible and inadmissible assets (item (d) above), \$40,000,000 divided by \$400,000,000-----percent-- 10

Schedule II

Computation of adjustment on account of short-term capital gain:

- (a) Amount attributable to inadmissible assets before adjustment under section 720(c) for short-term capital gain (stock in domestic corporation purchased July 1, 1944, for \$20,000 and sold September 1, 1944, for \$29,000), \$20,000 multiplied by 62 (days)----- \$1,240,000
- (b) Amount of gain realized (\$29,000 minus \$20,000)----- \$9,000
- (c) Sum of gain plus dividends received (\$9,000 plus \$1,000) -- \$10,000
- (d) Ratio of gain (item (b)) to sum of gain plus dividends received (item (c)), \$9,000 divided by \$10,000---percent-- 90
- (e) Adjustment on account of short-term capital gain, 90 percent of \$1,240,000 (item (a))----- \$1,116,000

SEC. 721. ABNORMALITIES IN INCOME IN TAXABLE PERIOD.

[ADDED BY SEC. 201, SECOND REV. ACT 1940; AMENDED BY SEC. 5, EXCESS PROFITS TAX AMENDMENTS 1941, AND BY SECS. 221 AND 222(f), REV. ACT 1942.]

(a) DEFINITIONS.—For the purposes of this section—

(1) **ABNORMAL INCOME.**—The term “abnormal income” means income of any class includible in the gross income of the taxpayer for any taxable year under this subchapter if it is abnormal for the taxpayer to derive income of such class, or, if the taxpayer normally derives income of such class but the amount of such income of such class includible in the gross income of the taxable year is in excess of 125 per centum of the average amount of the gross income of the same class for the four previous taxable years, or, if the taxpayer was not in existence for four previous taxable years, the taxable years during which the taxpayer was in existence.

(2) **SEPARATE CLASSES OF INCOME.**—Each of the following subparagraphs shall be held to describe a separate class of income:

(A) Income arising out of a claim, award, judgment, or decree, or interest on any of the foregoing; or

(B) [Not applicable to taxable years under these regulations (section 222(f), Rev. Act 1942).]

(C) Income resulting from exploration, discovery, prospecting, research, or development of tangible property, patents, formulae, or processes, or any combination of the foregoing, extending over a period of more than 12 months; or

(D) Income includible in gross income for the taxable year rather than for a different taxable year by reason of a change in the taxpayer's accounting period or method of accounting; or

(E) In the case of a lessor of real property, income included in gross income for the taxable year by reason of the termination of the lease; or

(F) Income consisting of dividends on stock of foreign corporations, except foreign personal holding companies.

All the income which is classifiable in more than one of such subparagraphs shall be classified under the one which the taxpayer irrevocably elects. The classification of income of any class not described in subparagraphs (A) to (F), inclusive, shall be subject to regulations prescribed by the Commissioner with the approval of the Secretary.

(3) **NET ABNORMAL INCOME.**—The term “net abnormal income” means the amount of the abnormal income less, under regulations prescribed by the Commissioner with the approval of the Secretary, (A) 125 per centum of the average amount of the gross income of the same class determined under paragraph (1), and (B) an amount which bears the same ratio to the amount of any direct costs or expenses, deductible in determining the normal-tax net income of the taxable year, through the expenditure of which such abnormal income was in whole or in part derived as the excess of the amount of such abnormal income over 125 per centum of such average amount bears to the amount of such abnormal income.

(b) **AMOUNT ATTRIBUTABLE TO OTHER YEARS.**—The amount of the net abnormal income that is attributable to any previous or future taxable year or years shall be determined under regulations prescribed by the Commissioner with the approval of the Secretary. In the case of amounts otherwise attributable to future taxable years, if the taxpayer either transfers substantially all its properties or distributes any property in complete liquidation, then there shall be attributable to the first taxable year in which such transfer or distribution occurs (or if such year is previous to the taxable year in which the abnormal income is includible in gross income, to such latter taxable year) all amounts so attributable to future taxable years not included in the gross income of a previous taxable year.

(c) **COMPUTATION OF TAX FOR CURRENT TAXABLE YEAR.**—The tax under this subchapter for the taxable year, in which the whole of such abnormal income would without regard to this section be includible, shall not exceed the sum of:

(1) The tax under this subchapter for such taxable year computed without the inclusion in gross income of the portion of the net abnormal income which is attributable to any other taxable year, and

(2) The aggregate of the increase in the tax under this subchapter for the taxable year (computed under paragraph (1)) and for each previous taxable year which would have resulted if, for each previous taxable year to which any portion of such net abnormal income is attributable, an amount equal to such portion had been included in the gross income for such previous taxable year.

(d) **COMPUTATION OF TAX FOR FUTURE TAXABLE YEAR.**—The amount of the net abnormal income attributable to any future taxable year shall, for the purposes of this subchapter, be included in the gross income for such taxable year.

(1) The tax under this subchapter for such future taxable year shall not exceed the sum of—

(A) the tax under this subchapter for such future taxable year computed without the inclusion in gross income of the portion of such net abnormal income which is attributable to such year, and

(B) the decrease in the tax under this subchapter for the previous taxable year in which the whole of such abnormal income would, without regard to this section, be includible which resulted by reason of the computation of such tax for such previous taxable year under the provisions of subsection (c); but the amount of such decrease shall be diminished by the aggregate of the increases in the tax under this subchapter for the future taxable year as computed under subparagraph (A) and for the taxable years intervening between such previous taxable year and such future taxable year which have resulted because of the inclusion of the portions of such net abnormal income attributable to such intervening years in the gross income for such intervening years.

(2) If, in the application of subsection (c), net abnormal income from more than one taxable year is attributable to any future taxable year, paragraph (1) of this subsection shall be applied with respect to such future taxable year in the order of the taxable years from which the net abnormal income is attributable beginning with the earliest, as if the portion of the net abnormal income from each such year was the only amount so attributable to such future taxable year, and (except in the case of the portion for the earliest previous taxable year) as if the tax under this subchapter for the future taxable year was the tax determined under paragraph (1) with respect to the portion for the next earlier previous taxable year.

(3) If in the application of paragraph (1) to any future taxable year it is determined that the decrease in tax computed under paragraph (1)(B) with respect to the net abnormal income, a portion of which is included in the gross income for the future taxable year, does not exceed the aggregate of the increases in tax computed under paragraph (1)(B) with respect to such net abnormal income, then the portions of such net abnormal income attributable to taxable years subsequent to such future taxable year shall not be included in the gross income for such subsequent taxable years. For the purpose of computing the tax under this subchapter for a taxable year subsequent to the future taxable year, the portion of net abnormal income attributable to the future taxable year shall not be included in the gross income for such future taxable year to the extent that the inclusion of such portion of net abnormal income in the gross income for such future taxable year did not result in an increase in tax for such future taxable year by reason of the provisions of paragraph (1),

(e) APPLICATION OF SECTION.—This section shall be applied only for the purpose of computing the tax under this subchapter as provided in subsections (c) and (d), and shall have no effect upon the computation of base period net income. For the purposes of subsections (c) and (d)—

(1) Net abnormal income means the aggregate of the net abnormal income of all classes for one taxable year.

(2) Under regulations prescribed by the Commissioner with the approval of the Secretary, the tax under this subchapter for previous taxable years shall be computed as if the portions of net abnormal income for each previous taxable year for which the tax was computed under this section were included in the gross income for the other previous taxable years to which such portions were attributable.

(3) If both subsections (c) and (d) are applicable to any current taxable year, subsection (d) shall be applied without regard to subsection (c), and subsection (c) shall be applied as if the tax under this subchapter, except for subsection (c), was the tax computed under subsection (d) and as if the gross income and the other amounts necessary to determine the adjusted excess profits net income were those amounts which would result in the tax computed under subsection (d).

(f) **ABNORMAL INCOME FROM EXPLORATION, ETC.**—If by reason of taking into account, in determining constructive average base period net income under section 722, exploration, discovery, prospecting, research, or development of tangible property, patents, formulae, or processes, or any combination of the foregoing, extending over a period of more than 12 months, such constructive average base period net income is higher than it would be without such taking into account, only such portion of the income in the taxable year resulting from such activity which is of a class described in subsection (a)(2)(C) as is attributable to another taxable year under this subchapter shall be deemed attributable to a year other than the taxable year.

SEC. 35.721-1 ABNORMALITIES IN INCOME IN TAXABLE YEAR.—Section 721 provides relief where abnormal income (as defined in section 721(a)) for any excess profits tax taxable year is attributable to other taxable years. The term “abnormal income” means income of any class includible in the gross income of the taxpayer for any excess profits tax taxable year (A) if it is abnormal for the taxpayer to derive gross income of such class, or (B) if the taxpayer normally derives gross income of such class but the amount of such income of such class is in excess of 125 percent of the average amount of the gross income of the same class determined for the four previous taxable years or, if the taxpayer was not in existence for four previous taxable years, the taxable years during which the taxpayer was in existence. It is abnormal for a taxpayer to derive income of any class only if the taxpayer had no gross income of that class for the four previous taxable years. For the purpose of determining abnormal income under this paragraph the gross income of the class for the previous taxable years is not to be increased or decreased by any allocation under the provisions of section 721. Abnormal income is to be determined by considering classes of income, and not merely particular items. As to the classification of income, see section 35.721-2.

Abnormal income must be adjusted, as provided in section 721(a)(3), in order to determine net abnormal income. Net abnormal income must then be allocated to the various items included in abnormal income. The items of net abnormal income so determined are the amounts which may be attributed to other taxable years under these regulations. Net abnormal income and the allocated amounts which are items of net abnormal income are determined in the following manner:

(a) Net abnormal income is determined as follows:

- (1) The abnormal income of each class is computed;
- (2) Such abnormal income is then reduced by 125 percent of the average amount of the gross income of the same class for the four previous taxable years or, if the taxpayer was not in existence for four previous taxable years, the previous taxable years during which it was in existence;
- (3) The abnormal income is further reduced by an amount which bears the same ratio to the amount of any direct costs or expenses, deductible in determining the normal-tax net income for the taxable year, through the expenditure of which such abnormal income was in whole or in part derived, as the abnormal income, reduced as provided in (a)(2), bears to the abnormal income. The amount thus determined is the net abnormal income.

(b) The items of net abnormal income are determined as follows:

(1) Each item of abnormal income is reduced, but not below zero, by an amount equal to 125 percent of the average income, if any, for the four previous taxable years, arising out of the same property as the income represented by the item;

(2) Each item of abnormal income is further reduced, but not below zero, by an amount which bears the same ratio to the amount of any direct costs or expenses, deductible in determining the normal-tax net income for the taxable year, through the expenditure of which such item was in whole or in part derived, as the amount of the item of abnormal income reduced in (b)(1) bears to the amount of the item of abnormal income;

(3) The aggregate of the items as reduced under (b)(1) and (2) is determined;

(4) Net abnormal income is allocated to each item in the proportion that the item, reduced as provided in (b)(1) and (2), bears to the aggregate of the items so reduced, determined in (b)(3). The amount so allocated is an item of net abnormal income.

The following examples illustrate the computation of items of net abnormal income:

Example (1). For the taxable year 1942, the A Corporation, which makes its income tax returns on the calendar year basis, has gross income of \$1,000,000 from judgments. This consists of two items, one of \$800,000 for a judgment against X and the other of \$200,000 for a judgment against Y. Its average income of this class for the four previous taxable years was \$300,000. For 1942, it has direct deductible expenses of \$160,000 applicable to the judgment against X. There were no direct deductible expenses applicable to the other judgment. The \$1,000,000 is abnormal income, since it is in excess of 125 percent of the average income of this class for the four previous taxable years. The items of net abnormal income represented by the judgments are determined as follows:

(1) Abnormal income.....	\$1,000,000
(2) Less 125 percent of average income (\$300,000) for the four previous taxable years.....	375,000
(3) Excess of (1) over (2).....	625,000
(4) Less an amount bearing same ratio to \$160,000 (deductions applicable to items in this class) as \$625,000 bears to \$1,000,000.....	100,000
(5) Net abnormal income.....	525,000
(6) Gross income on account of the judgment against X.....	\$800,000
(7) Less deductions applicable to such item.....	160,000
(8) Amount of (6) reduced by (7).....	640,000
(9) Gross income on account of the judgment against Y.....	\$200,000
(10) Less deductions applicable to such item.....	None
(11) Amount of (9) reduced by (10).....	200,000
(12) Aggregate of (8) and (11).....	840,000
(13) Portion of net abnormal income allocated to the judgment against X (640,000/840,000 of \$525,000).....	400,000
(14) Portion of net abnormal income allocated to the judgment against Y (200,000/840,000 of \$525,000).....	125,000

Example (2). For the taxable year 1942, the A Corporation has \$134,062.50 net abnormal income from the two oil leases which it developed. One lease, on the X field, produced an average of \$60,000 a year during the four previous taxable years, and \$85,000 in 1942. There were \$6,800 direct expenses applicable to this lease. The other lease, on the Y field, produced no income in the four previous years. In 1942, there were \$38,200 direct expenses applicable to this lease. The lease produced \$155,000 income in 1942. The item of net abnormal income represented by the X lease is \$9,788.69, and the item represented by the Y lease is \$124,273.81, computed as follows:

(1) Gross income on account of the X lease.....	\$85,000.00
(2) Less 125 percent of average income of this lease for the four previous taxable years (125 percent of \$60,000).....	75,000.00
(3) Item (1) less item (2).....	10,000.00
(4) Less amount bearing same ratio to \$6,800 (expenses applicable to this lease) as \$10,000 bears to \$85,000.....	800.00
(5) Income from X lease reduced on account of average income and applicable expenses.....	9,200.00
(6) Gross income on account of Y lease.....	\$155,000.00
(7) Less 125 percent of average income for the four previous taxable years.....	None
(8) Item (6) less item (7).....	155,000.00
(9) Less amount bearing same ratio to \$33,200 (ex- penses applicable to this lease) as \$155,000 bears to \$155,000.....	28,200.00
(10) Income from Y lease reduced on account of average income and applicable expenses.....	116,800.00
(11) Aggregate of item (5) and item (10).....	126,000.00
(12) Portion of net abnormal income allocated to the X lease (9,200/126,000 of \$134,062.50).....	9,788.69
(13) Portion of net abnormal income allocated to the Y lease (116,800/126,000 of \$134,062.50).....	124,273.81

SEC. 35.721-2 CLASSIFICATION OF INCOME.—Section 721(a)(2)(A), (C), (D), (E), and (F) sets forth five separate classes of income. Income which does not fall within those provisions may be grouped by the taxpayer, subject to approval by the Commissioner on the examination of the taxpayer's return, in such other classes as are reasonable in a business of the type which the taxpayer conducts, and as are appropriate in the light of the taxpayer's business experience and accounting practice.

All the income which reasonably is classifiable in more than one class shall be classified under the one which the taxpayer irrevocably elects. Such election shall be made in the manner prescribed in section 35.721-3.

The classification of income in any year must be consistent with the classification made under section 721 for previous years. The classification must also be consistent with any classification made in applying to the taxpayer section 711(b)(1)(H), (I), or (J), and section 736.

Income from contracts the performance of which requires more than 12 months is a class of income. In the case of a taxpayer which does not make the election provided in section 736(b), any such income derived in an excess profits tax taxable year beginning before January 1, 1942, and attributable under the provisions of section 30.721-7

of Regulations 109 to a future taxable year beginning after December 31, 1941, shall be included in gross income for such future taxable year as provided in section 35.721-5. However, any such income derived in an excess profits tax taxable year beginning after December 31, 1941, shall not be considered as abnormal income for the purposes of section 721.

SEC. 35.721-3 AMOUNT ATTRIBUTABLE TO OTHER YEARS.—The mere fact that an item includible in gross income is of a class abnormal either in kind or in amount does not result in the exclusion of any part of such item from excess profits net income. It is necessary that the item be found attributable under these regulations in whole or in part to other taxable years. Only that portion of the item which is found to be attributable to other years may be excluded from the gross income of the taxpayer for the year for which the excess profits tax is being computed.

Items of net abnormal income are to be attributed to other years in the light of the events in which such items had their origin, and only in such amounts as are reasonable in the light of such events. To the extent that any items of net abnormal income in the taxable year are the result of high prices, low operating costs, or increased physical volume of sales due to increased demand for or decreased competition in the type of product sold by the taxpayer, such items shall not be attributed to other taxable years. Thus, no portion of an item is to be attributed to other years if such item is of a class of income which is in excess of 125 percent of the average income of the same class for the four previous taxable years solely because of an improvement in business conditions. In attributing items of net abnormal income to other years, particular attention must be paid to changes in those years in the factors which determined the amount of such income, such as changes in prices, amount of production, and demand for the product. No portion of an item of net abnormal income is to be attributed to any previous year solely by reason of an investment by the taxpayer in assets, tangible or intangible, employed in or contributing to the production of such income.

Section 721 has no effect upon the computation of base period net income or of earnings and profits and therefore does not affect the computation of the excess profits credit. Similarly, it has no application in the determination of taxes other than the excess profits tax imposed by Subchapter E of Chapter 2 (except where the excess profits tax or the credit provided in section 26(e) is applicable in the computation of other taxes). Amounts attributed to future years are to be included in gross income for such years for excess profits tax purposes only. If the taxpayer either transfers substantially all its properties or distributes any property in complete liquidation prior to the close of the last future year to which any such amounts are

attributable, then all amounts of net abnormal income attributable to years subsequent to both—

(a) the first year in which such transfer or distribution in liquidation occurs, and

(b) the taxable year in the gross income of which such abnormal income would have been included except for section 721 shall be included in the gross income for the year referred to in (a) or the year referred to in (b), whichever is the later. For example, if a taxpayer realizes in 1944 net abnormal income attributable to the years 1942 to 1946, inclusive, and in 1945 begins to distribute its property in complete liquidation, the portion of the net abnormal income attributable to the future year 1946 is to be reallocated to and included in the gross income for 1945 (the first year of liquidation) in addition to the amount already attributed to that year. If the first distribution in liquidation occurred before the year of realization, for example, in 1943, the portions of the net abnormal income attributable to the future years 1945 and 1946 would be included in the gross income for 1944 (the year of realization) in addition to the amount already attributed to that year. In neither event will the allocations originally made to 1942, 1943, and 1944 be disturbed.

Specific methods of treating items of net abnormal income of the five classes specified in section 721(a) are set forth in sections 35.721-6 to 35.721-10. These methods are to be applied subject to the provisions of this section.

A taxpayer claiming the benefits of section 721 shall file with its excess profits tax return a detailed statement in duplicate containing the following information:

(1) the amount and a description of each class of income claimed to be abnormal, and the amount and a description of each item in each such class;

(2) for each class of income claimed to be abnormal, the amount and a description of each item of income of the same class derived during the four taxable years immediately preceding the taxable year, and the aggregate amount of such items for each taxable year;

(3) for each class of income claimed to be abnormal, the amount of net abnormal income, the amount of each item of net abnormal income, and the computations by which these amounts were determined;

(4) the transactions in which each such item had its origin, the method used in allocating such item, the amount allocated to each year, and the reasons therefor; and

(5) all other facts upon which the taxpayer relies.

If any item of income is reasonably classifiable in more than one class, the inclusion of such item in any one of such classes in the statement

referred to above shall constitute an irrevocable election by the taxpayer for the purpose of section 721(a) (2).

SEC. 35.721-4 COMPUTATION OF TAX FOR CURRENT TAXABLE YEAR.—

The excess profits tax for the taxable year shall be the smaller of the following amounts:

(a) The excess profits tax computed without excluding from gross income any amounts attributable to other years under section 721, and so computed with the application of section 721(d), relating to the tax for future taxable years to which net abnormal income is attributable, if such section is applicable to such taxable year; or

(b) The sum of (1) the excess profits tax for the taxable year computed without including in gross income the amount of items of net abnormal income attributable to other taxable years, and so computed with the application of section 721(d) if such section is applicable, and (2) the aggregate of the amounts of additional excess profits tax which would have resulted for the taxable year in the computations under (1) of this paragraph and for each previous excess profits tax taxable year if there had been included in the gross income for each previous taxable year the amount of the items, if any, of the net abnormal income attributable thereto. If the excess profits tax for any previous taxable years was computed under section 721, the increases in tax under (2) of this paragraph shall be computed on the basis of the computations made for such previous taxable years, that is, as if the gross income for all previous taxable years included the items of net abnormal income attributable to such previous taxable years from the other previous taxable years to which section 721 applied.

Since the net abnormal income attributable to any taxable year, if included in the gross income for such taxable year, would reduce items, such as the net operating loss or unused excess profits credit, for such year which are taken into account in other taxable years through a carry-over or carry-back, such inclusion in gross income may also result in an increase in tax in such other taxable years in which such loss or unused credit is taken into account in computing the net operating loss deduction or unused excess profits credit adjustment. Section 721 requires that the increase in tax for the taxable year in which such net operating loss deduction or unused excess profits credit adjustment would be affected by the attributed income must be taken into account in computing the tax under section 721. Such income shall not be included in determining the net abnormal income for the taxable year to which it is attributable. The increase in tax caused by any adjustment under section 721 is the difference between the tax computed without such adjustment and the tax computed after making such adjustment.

The computations required by section 721(c) may be illustrated by the following examples:

Example (1). The taxpayer, on the calendar year basis, sustains a net operating loss in 1941 which forms the basis for a net operating loss deduction of \$10,000 for 1942. In 1942 it has \$6,000 net abnormal income, all of which is attributable to 1941. Although there would be no increase in excess profits tax for 1941 if the \$6,000 net abnormal income were included in gross income for that year, the \$6,000 would offset the \$10,000 net operating loss for 1941. Therefore, the net operating loss deduction for 1942 would be reduced to \$4,000 and the excess profits tax for 1942 would be increased to the extent caused by such reduction of the net operating loss deduction. The tax for 1942 is whichever is less of the following:

(i) The tax for 1942 computed without excluding any net abnormal income from gross income, or

(ii) The tax for 1942 computed after excluding from gross income the \$6,000 net abnormal income attributable to 1941, plus the increase in the tax so computed which would result if, by reason of the \$6,000 being included in gross income for 1941, the net operating loss deduction available in computing excess profits net income for 1942 were only \$4,000 instead of \$10,000.

The taxpayer had net income and adjusted excess profits net income for 1942 after giving effect to the net operating loss deduction of \$10,000. For 1943 it has \$8,000 net abnormal income, all of which is attributable to 1941. The tax for 1943 is whichever of the following is the lesser:

(A) The tax for 1943 computed without excluding any net abnormal income from gross income; or

(B) The tax for 1943 computed after excluding from gross income the \$8,000 net abnormal income attributable to 1941, plus the increase in the tax for 1941 and 1942 which would be caused by the reduction in the net operating loss for 1941 if the \$8,000 were included in gross income for 1941 so that it offset the net operating loss sustained in that year. In making these computations for 1941 and 1942, the adjustments made for those years in applying section 721(c) to 1942 are retained, that is, the \$6,000 net abnormal income attributable to 1941 from 1942 in applying section 721 to 1942 is treated as if it remained in gross income for 1941, and the \$6,000 net abnormal income attributable to 1941 from 1942 is not included in the gross income for 1942 and the net operating loss deduction for that year (prior to any adjustment caused by applying section 721(c) to 1943) is treated as being \$4,000, not \$10,000.

Example (2). The taxpayer, on the calendar year basis, has \$50,000 net abnormal income in 1940 attributable in the amount of \$10,000 to each of the years 1941 to 1945. This \$10,000 amount is therefore included in gross income for each of these years. In 1945 it has \$60,000

net abnormal income, all of which is attributable to 1943. The tax for 1945 is whichever of the following is the lesser:

- (i) The tax for 1945 computed under section 721(d) without excluding any net abnormal income for 1945 from gross income; or
- (ii) The tax for 1945 computed under section 721(d) after excluding the \$60,000 net abnormal income for 1945 from gross income, plus the increase in the tax for 1945 as so computed, if any, and the increase in tax, if any, for all previous taxable years which would result if the \$60,000 net abnormal income were included in gross income for 1943.

For any taxable year for which the excess profits tax or the increase in excess profits tax is determined under section 721(c), the excess profits tax may be computed pursuant to the provisions of section 710(a) (1) (B) (if such section is applicable to such year) as an amount which when added to the normal tax and surtax for the year is equal to 80 percent of the corporation surtax net income for such year determined under section 15 or Supplement G of Chapter 1 (relating to insurance companies) but without regard to the credit provided in section 26(e) (relating to income subject to excess profits tax), as follows:

If the provisions of section 710(a) (1) (B) are applicable for the purposes of paragraph (a) of this section, the normal tax and surtax shall be the actual normal tax and surtax for the taxable year computed under Chapter 1, and the corporation surtax net income shall be the actual corporation surtax net income computed under Chapter 1 or, if the excess profits tax is computed under section 721(d), the corporation surtax net income determined for the purposes of section 721(d). See section 35.721-5. If the provisions of section 710(a) (1) (B) are applicable for the purposes of clause (1) of paragraph (b) of this section, the normal tax and surtax shall be the actual normal tax and surtax for the taxable year computed under Chapter 1, and the corporation surtax net income shall be the corporation surtax net income described in the preceding sentence except that the amount of any items of net abnormal income attributable to other taxable years shall be excluded from gross income. If the provisions of section 710(a) (1) (B) are applicable for the purposes of clause (2) of paragraph (b) of this section, the normal tax and surtax for a previous taxable year shall be the actual normal tax and surtax for such year computed under Chapter 1, and the corporation surtax net income for such year shall be the corporation surtax net income described in the first sentence of this paragraph increased by the total amount of the items of net abnormal income attributable to such prior year.

SEC. 35.721-5 COMPUTATION OF TAX FOR FUTURE TAXABLE YEARS.—Amounts of items of net abnormal income attributable to a future taxable year shall be included in the gross income for such future

taxable year for the purposes of the excess profits tax, except that if in the application of section 721(d) (1) to any future taxable year it is determined that the decrease in tax computed under section 721(d) (1) (B) for the taxable year in which the net abnormal income was realized does not exceed the aggregate of the increases in tax for other taxable years with respect to such net abnormal income, as computed under section 721(d) (1) (B), then no portion of such net abnormal income shall be included in gross income for any taxable year subsequent to such future taxable year. For example, in 1940 the taxpayer, on the calendar year basis, has \$60,000 net abnormal income, of which \$10,000 is attributable to each of the years 1941 to 1946. In applying section 721(d) to 1943, it is determined that the decrease in tax for 1940 caused by the application of section 721(c) (computed with the exclusion of the net abnormal income from gross income) does not exceed the increases in tax for 1941 and 1942 caused by the inclusion in gross income of the net abnormal income attributable to those years. Therefore, the net abnormal income for 1940 attributable to 1944, 1945, and 1946 shall not be included in gross income for those years.

The excess profits tax is determined as the lesser of the amounts computed under section 710(a) (1) (A) (90 percent of the adjusted excess profits net income) and section 710(a) (1) (B). Under section 710(a) (1) (B), the excess profits tax is an amount which when added to the normal tax and surtax for the year is equal to 80 percent of the corporation surtax net income for such year determined under section 15 or Supplement G of Chapter 1 (relating to insurance companies) but without regard to the credit provided in section 26(e) (relating to income subject to excess profits tax). For the purpose of applying section 710(a) (1) (B) to a future taxable year to which amounts of items of net abnormal income are attributable, which amounts are included in gross income for such year for excess profits tax purposes under section 721(d), the normal tax and surtax shall be the actual normal tax and surtax for the taxable year computed under Chapter 1, and the corporation surtax net income shall be computed on the basis of the gross income determined under section 721 for the purposes of the excess profits tax for such taxable year.

If net abnormal income is included in the gross income for any future taxable year, and if the tax for such year is the amount determined under the limitations of section 721(d) (1) with respect to such net abnormal income, then for the purpose of computing the net operating loss deduction or unused excess profits credit adjustment for any taxable year subsequent to such future taxable year the gross income for the future taxable year shall be deemed to include only such portion of the net abnormal income as, when added to the other

gross income for such future taxable year, would result without the application of section 721(d)(1) in an excess profits tax equal to the amount determined under that section. For example, \$50,000 net abnormal income for 1942 is attributable to 1945, and is included in the gross income for that year. The excess profits tax for 1945 computed without the application of section 721(d)(1) is \$145,000. Under section 721(d)(1), the excess profits tax is determined to be \$118,000. If only \$20,000, instead of \$50,000, had been included as net abnormal income in the gross income for 1945, the excess profits tax for that year without the application of section 721(d)(1) would be \$118,000. Therefore, for the purpose of computing the net operating loss deduction or unused excess profits credit adjustment for any taxable year subsequent to 1945, the gross income for 1945 is considered to include \$20,000 and not \$50,000 net abnormal income.

Section 721(d)(1) provides that the excess profits tax for a future taxable year to which any portion of the net income for a previous taxable year is attributed is the smaller of the amounts determined under (a) and (b) below:

(a) The excess profits tax for such year computed with the inclusion in gross income of such portion of the net abnormal income;

(b) The sum of—

(1) the excess profits tax for such year computed without the inclusion in gross income of such portion of the net abnormal income, and

(2) the excess of—

(i) the decrease in excess profits tax for the year of realization which resulted from the exclusion of net abnormal income from the gross income for such year, over

(ii) the aggregate of the increase in excess profits tax for the future tax-year (as determined under (1) of this paragraph) and for intervening years resulting from the inclusion in the gross income for such intervening years of the other portions of such net abnormal income.

If net abnormal income from more than one previous taxable year is attributed to the future taxable year, the determinations under (a) and (b) of this section are to be made first with respect to the portion of net abnormal income attributed from the earliest previous taxable year, the portions of net abnormal income from the later taxable years being treated as ordinary income for such future taxable year. The determinations under (a) and (b) are then to be made with respect to the portion of net abnormal income attributed from the next earliest previous taxable year, and for such purpose the excess profits tax for the future taxable year determined under (a) is considered the excess profits tax resulting from the determinations under (a) and (b) with respect to the net abnormal income attributed

from the earliest previous taxable year, and the gross income referred to in (b) is considered that amount which would result in the tax reported under (a) if section 721(d)(1) did not apply. The determinations for the other previous taxable years from which net abnormal income is attributed to the future taxable year are to be made in a similar manner in the order of such taxable years, and the amount so determined for the latest of such taxable years is the tax under section 721(d)(1) for the future taxable year. The foregoing provisions are illustrated by the following example:

Example. A taxpayer, on the calendar year basis, has net abnormal income for 1941, of which \$10,000 is attributed to 1945, and net abnormal income for 1942, of which \$20,000 is also attributed to 1945. The tax for 1945, before the application of section 721(d)(1), is \$90,000. The adjusted excess profits net income for 1945 is \$100,000, and the gross income and other amounts necessary to determine this amount are such that a decrease in gross income (if such decrease is \$100,000 or less) causes a decrease of an equal amount in adjusted excess profits net income. For the purpose of applying section 721(d)(1) to 1945, computations under (a) and (b) are first made only with respect to the \$10,000 attributed from 1941, and the \$20,000 attributed from 1942 is not considered net abnormal income. Upon this computation, the tax under (a) is \$90,000. The tax under (b)(1), determined by excluding the \$10,000 from gross income, is \$81,000. Assuming that the amount determined under (b)(2) with respect to the \$10,000 net abnormal income is \$4,500, the excess profits tax would then be determined under (b) as \$85,500, a lesser amount than the \$90,000 computed under (a). The computations under (a) and (b) are then made with respect to the \$20,000 attributed from 1942. For this purpose, the tax under (a) is considered to be the \$85,500 amount computed with respect to the net abnormal income attributed from 1941. For the purposes of (b), the taxpayer is considered to have such gross income and other items of deductions and credits as would produce the tax of \$85,500 determined with respect to the net abnormal income attributed from 1941. That is, the gross income is considered reduced by \$5,000, the items of deductions and credits remaining the same, so that the adjusted excess profits net income is reduced to \$95,000, on which amount the tax would be \$85,500. The exclusion of \$20,000 from that amount of gross income which would produce \$95,000 adjusted excess profits net income would reduce such adjusted excess profits net income to \$75,000, on which the tax is \$67,500, and this \$67,500 amount is considered the tax under (b)(1) determined by excluding the \$20,000 from gross income. Assuming that the amount determined under (b)(2) with respect to the \$20,000 net abnormal income is \$7,500, then the tax finally determined under section 721(d)(1) for the future tax-

able year would be \$75,000, the sum of \$67,500 and \$7,500, which is a lesser amount than the \$85,500 determined under (a).

If part of the income for a future taxable year, to which year net abnormal income of previous years is attributed, constitutes net abnormal income for such future year which is attributable to other taxable years, then the computations under section 721(d)(1) shall be made without regard to the provisions of section 721(c) which apply in determining the tax for such future taxable year. Section 721(c) is applied after the tax is determined under the limitations of section 721(d). In determining for the purpose of section 721(d)(1) the increases and decreases in tax for previous taxable years, portions of net abnormal income for any of such previous taxable years attributable under section 721(c) to other of such previous taxable years shall be treated as remaining in gross income in the years to which attributed.

This section may be illustrated by the following example:

Example. In the taxable year 1940, the A Corporation realized \$26,000 net abnormal income, \$2,000 of which is attributed to the taxable year 1940 and \$4,000 to each of the taxable years 1941 through 1946. For the years 1940 through 1942, the adjusted excess profits net income, computed with these attributed amounts included in gross income, and the resulting excess profits tax are as follows:

	Adjusted excess profits income	Excess profits tax
1940.....	\$4, 000	\$1, 000
1941.....	54, 000	20, 800
1942.....	104, 000	93, 600

The adjusted excess profits net income for 1943, after the inclusion in gross income of the amount attributed to such year, is \$124,000. The excess profits tax for such year is \$109,000, computed as follows:

(a) Tax on \$124,000 computed without regard to the limitations of section 721(d).....	\$111, 600
(b) (1) Tax on \$120,000 (income for 1943 excluding amount attributed to such year).....	108, 000
(2) (i) Tax for 1940 if section 721 were not applied to the net abnormal income for such year (tax on sum of \$4,000 plus the \$24,000 attributed to other years, or a total of \$28,000).....	\$7, 400
(ii) Less tax for 1940 after application of section 721.....	1, 000

(iii) Decrease in tax for 1940 due to application of section 721-----	\$6,400
(3) (i) Tax for 1941 after application of section 721-----	\$20,800
(ii) Less tax for 1941 if attributed income of \$4,000 were excluded from gross income (tax on \$50,000)-----	19,000
(iii) Increase in tax for 1941 due to inclusion of attributed income-----	1,800
(4) (i) Tax for 1942 after application of section 721-----	93,600
(ii) Less tax for 1942 if attributed income of \$4,000 were excluded from gross income (tax on \$100,000)-----	90,000
(iii) Increase in 1942 tax due to inclusion of attributed income-----	3,600
(5) Aggregate of increases in tax for intervening years 1941 and 1942 (item (3) (iii) plus item (4) (iii))--	5,400
(6) Excess of decrease in tax for 1940 over aggregate of increases in tax for intervening years 1941 and 1942 (item (2) (iii) minus item (5))-----	\$1,000
(7) Sum of tax on income for 1943, excluding amount attributed to such year, plus excess of decrease in tax for 1940 over aggregate of increases in tax for 1941 and 1942 (item (1) plus item (6))-----	109,000

Since the amount computed in (b) (7), \$109,000, is less than the amount computed in (a), \$111,600, the excess profits tax of the A Corporation for 1943 is \$109,000, the smaller amount.

In the above example, the decrease in tax for 1940 (\$6,400) has been equaled by the aggregate of the increases in tax for the intervening years 1941 through 1943 (\$1,800 plus \$3,600 plus \$1,000). Therefore, the \$4,000 attributed to 1944, 1945, and 1946 will not be included in gross income for such years.

SEC. 35.721-6 INCOME ARISING OUT OF A CLAIM, AWARD, JUDGMENT, OR DECREE, OR INTEREST THEREON.—The first class of potentially abnormal income specifically set forth in section 721(a) (2) is income arising out of a claim, award, judgment, or decree, or interest thereon. All items of such income are of the same class. Therefore, in determining whether income arising out of a judgment, for example, is abnormal either in kind or in amount, account must be taken not only of other judgment income, if any, received in preceding taxable years, but also of any income arising out of claims, awards, and decrees, and interest thereon, so received.

In determining the portions of income of the class described which are attributable to other taxable years, due regard shall be given to the nature of the claim upon which the recovery is founded. Allocation will generally be made to the year or years during which occurred the exploitation, removal, or use, as the case may be, of the property right forming the subject matter of the claim, award, judgment, or decree. Thus, in the case of a judgment for infringement of a patent, the number of units produced through the use by the infringer of such patent in the respective years involved shall constitute a proper basis of allocation. Similarly, if the removal of minerals forms the basis of the recovery, the units removed in the respective years shall constitute a proper basis of allocation. The income arising from awards of the Mixed Claims Commission, United States and Germany, to the extent they constitute compensation for past losses, shall be attributed to the years during which such losses occurred. Interest shall be attributed to the years for which it was allowed.

This section may be illustrated by the following example:

Example. Based upon encroachment by the Y Corporation upon mineral property, the X Corporation in 1942 obtains judgment for and payment of \$350,000. The X Corporation has not in any prior year derived income from any like source; nor are there any direct expenses involved in obtaining the judgment which are deductible for 1942. This amount, therefore, represents the net abnormal income, and is the only item included therein. As the judgment is based upon \$1 per ton for ore removed in each year, the amount received is allocated as follows:

Year	Tonnage	Income attributed
1941-----	150, 000	150, 000
1942-----	200, 000	200, 000
Total-----	-----	350, 000

There was no net operating loss deduction or unused excess profits credit adjustment in 1941 or 1942. For the purposes of the computation of the excess profits tax there shall be included in gross income for the year 1942 the amount of \$200,000. The amount of \$150,000 allocated to 1941 affects the total 1942 excess profits tax as explained below.

The excess profits tax for the year 1942 shall be determined as follows:

(1) An excess profits tax for 1942 shall be computed without regard to section 721, that is, by including in gross income the item of \$350,000, and

(2) A partial excess profits tax for 1942 shall be computed on the net income arrived at by including in gross income only \$200,000 of the item of \$350,000, and to the partial tax so computed there shall be added the increase in the excess profits tax which would result from the inclusion in gross income for the year 1941 of \$150,000 of the item of \$350,000.

The excess profits tax for 1942 is either (1) or (2), whichever is the lesser.

To arrive at the increase in the excess profits taxes for 1941 which would result from the inclusion in the gross income for such year of \$150,000 of the item of \$350,000, the excess profits tax shall (but only for the purpose of determining the 1942 excess profits tax liability) be computed first by including the item of \$150,000 in the gross income, and second by excluding such amount from the gross income. The excess of the amount obtained as the result of the first computation over the amount obtained as the result of the second computation represents such increase.

If in the above example, in addition to the principal amount, interest had been added to the judgment, such interest would be also properly allocable as between 1942 and 1941 in accordance with the method sanctioned by the court in settling the amount of such interest. If the portion of the total interest attributable to the respective years cannot be ascertained from the judgment, such interest may be allocated among such years, upon the basis of the respective portions of the principal amount attributable to such years, giving effect to the period of time each portion remained unpaid.

SEC. 35.721-7 EXPLORATION, DISCOVERY, PROSPECTING, RESEARCH, OR DEVELOPMENT.—The second class of potentially abnormal income specifically set forth in section 721(a)(2) is income resulting from exploration, discovery, prospecting, research, or development of tangible property (such as mines, oil producing property, and timber tracts), patents, formulae, or processes, or any combination thereof, extending over a period of more than 12 months. The exploration, discovery, prospecting, research, or development must be that of the taxpayer. Income resulting from activities of such a character carried on by a predecessor is not entitled to the treatment provided in section 721.

An item of income resulting from exploration, discovery, prospecting, research, or development is all such income for the taxable year arising out of a unit of property such as an oil lease or other mineral property defined in section 29.23(m)-1(i) of Regulations 111, a patent;

or a formula. If the taxpayer engages in manufacturing, marketing, mining, oil production, or similar activities, only such portion of the resulting income as is attributable to exploration, discovery, prospecting, research, or development is within the class of income described in this section. For example, the A Corporation develops a patented device and itself manufactures and sells such device. It also permits other corporations to manufacture such device upon payment of a royalty of \$10 for each device produced. Income resulting from the development of the device is the sum of the royalties included in income and so much of the income arising out of the sale of the units manufactured by the taxpayer itself as does not exceed \$10 for each device so manufactured and sold:

In general, an item of net abnormal income of the class described in this section is to be attributed to the taxable years during which expenditures were made for the particular exploration, discovery, prospecting, research, or development which resulted in such item being realized and in the proportion which the amount of such expenditures made during each such year bears to the total of such expenditures. Allocation of items of net abnormal income of the class described in this section must be made according to the principles set forth in section 35.721-3.

Exploration, discovery, prospecting, research, or development of tangible property, patents, formulae, or processes, or any combination of the foregoing extending over a period of more than 12 months occurring during or immediately prior to the base period may constitute the basis of a claim under section 722(b) that the average base period net income is an inadequate standard of normal earnings and for the establishment of a constructive average base period net income under section 722(a). In such case, if the constructive average base period net income determined by taking into account the activities described in section 721(a)(2)(C) and in the preceding sentence is higher than it would be if such activities are not taken into account, only that portion of the net abnormal income for the taxable year resulting from such activities, which is of a class described in section 721(a)(2)(C) and this section, as is attributable to another excess profits tax taxable year shall be deemed attributable to a year other than the taxable year. No amount of such net abnormal income shall be attributed to any year in the taxpayer's base period or to any year prior thereto.

This section may be further illustrated by the following examples:

Example (1). In January, 1940, the X Corporation began the development of a certain device on which it expended considerable sums. The corporation secures a patent on such device in December, 1942, and in the same month sells such patent at a profit. It did not in any of the four immediately preceding years derive income of the

class specified in section 721(a)(2)(C). The net abnormal income represented by this item is \$250,000. In 1940, the corporation expended \$50,000 on the development of this device, \$100,000 in 1941, and \$150,000 in 1942, a total of \$300,000. For excess profits tax purposes, one-sixth ($50,000/300,000$) of the item of \$250,000 is, therefore, attributable to 1940; one-third ($100,000/300,000$) is attributable to 1941; and one-half ($150,000/300,000$) is attributable to 1942. For method of computation of the excess profits tax for the year 1942, see section 35.721-4.

Example (2). In 1941, the A Corporation purchased from X, an inventor, the rights to a device he was developing, paying him \$4,500 for such rights. In perfecting the device, the corporation spent \$3,000 in 1941 and \$6,000 in 1942, or a total of \$9,000. A patent was obtained on the device in 1942, and it was licensed for use in the industry. The corporation had a \$15,000 item of net abnormal income in 1942 as a result of the royalties received for the use of this device. Of this item, \$5,000 ($3000/9000$ of \$15,000) is attributable to 1941, and may be excluded from gross income for the year 1942 in the computation of excess profits tax for that year. For method of computation of the excess profits tax for the year 1942, see section 35.721-4 and the example in section 35.721-6.

Example (3). In 1937, the B Corporation, which had been engaged in manufacturing and selling patented products under licensing agreements with the patent holders, discontinued such practice and devoted its facilities to research and development of new products. In 1938 and 1939, the corporation secured several patents and started selling the products which it manufactured under such patents. In 1940 and in subsequent years, the corporation received net abnormal income as a result of such sales. The corporation has made an application for relief under section 722(b)(4) on the ground that it had changed the character of its business during the base period, and that its average base period net income does not reflect the normal operation for the entire base period of the business. The constructive average base period net income finally determined is higher than it would have been if the activities referred to and engaged in by the corporation in 1938 and 1939 had not occurred and were not taken into account under section 722. Consequently no part of any net abnormal income determined under section 721(a)(2)(C) and this section shall be deemed to be attributable to 1937, 1938, or 1939.

SEC. 35.721-8 CHANGE IN ACCOUNTING PERIOD OR METHOD OF ACCOUNTING.—The third class of potentially abnormal income specifically set forth in section 721(a)(2) is income which is includible in gross income for the taxable year rather than for a different taxable year by reason of a change in the taxpayer's accounting period or

method of accounting. This class may include such items of income as are includible in gross income for the taxable year by reason of a change from the installment method to the straight accrual method of accounting, a change in inventory method, or a change from the reserve method to the specific charge-off method for the treatment of bad debts. Items of net abnormal income includible in gross income for the taxable year rather than for a different taxable year by reason of a change from the installment method to the straight accrual method of accounting shall be attributed to the year or years such items accrued. The method of allocating items of net abnormal income includible in gross income for the taxable year rather than for a different year by reason of other changes in accounting method or changes in accounting period is to be determined in each particular case upon consideration of all the facts in the case. (See section 35.721-3 as to the statement required to be filed where the benefits of section 721 are claimed.)

This section may be illustrated by the following example:

Example. The Y Corporation, prior to the calendar year 1942, reported its income on the installment basis. For the year 1942 it secures the consent of the Commissioner to a change in the method of reporting income to the straight accrual basis.

The gross income for the year 1942 computed under the straight accrual method of accounting and without regard to section 721 is as follows:

From installment sales contracts made in 1942.....	\$320,000
From installment collections in 1942 on sales contracts made prior to 1942.....	250,000
From installment sales contracts made prior to 1942 but not yet collected.....	130,000
Total.....	700,000

Under the provisions of section 35.721-3, the items of net abnormal income included in the abnormal income of \$380,000 resulting from sales contracts made prior to 1942 are to be attributed to the years in which such contracts were made. For method of computation of the excess profits tax for the year 1942, see section 35.721-4 and the example in section 35.721-6.

SEC. 35.721-9 INCOME DERIVED BY LESSOR FROM TERMINATION OF LEASE.—The fourth class of potentially abnormal income specifically set forth in section 721(a)(2) is amounts included in the gross income of a lessor for the taxable year by reason of the termination of the lease. Income derived by reason of the fact that improvements made by the lessee upon leased property come into the possession or the control of the lessor upon termination or forfeiture of the lease is income of such class, except to the extent such income is excluded

from gross income under section 22(b) (11) for taxable years beginning after December 31, 1941. Other income derived by a lessor, by reason of the termination of the lease and not excluded from gross income under section 22(b) (11) (see section 29.22(b) (11)-1 of Regulations 111) is also income of such class. If such other income includible in gross income is abnormal either in kind or in amount, the resulting item of net abnormal income is to be attributed to the taxable year in which such item is realized and prior or subsequent taxable years in the light of the agreement underlying the realization of such item. If, for instance, the lessee pays a lessor a lump sum as consideration for the cancellation of a lease, the resulting item of net abnormal income, if any, shall be attributed ratably to the taxable years included in what would have been the remaining life of the lease had such lease not been canceled.

Income derived in an excess profits tax taxable year beginning before January 1, 1942, by reason of the fact that improvements made by the lessee upon the leased property came into the possession or control of the lessor upon termination or forfeiture of the lease may result in the allocation of net abnormal income under section 721 to taxable years beginning after December 31, 1941. In such cases, if the income includible is abnormal either in kind or in amount, the resulting item of net abnormal income shall be allocated in accordance with the following rules:

(a) If the lease has not been canceled or forfeited, but has merely expired, the amount of such item shall be spread over the life of the lease;

(b) If the lease has been canceled or forfeited, but the remaining useful life of the improvement is not in excess of what would have been the remaining life of the lease had the cancellation or forfeiture not occurred, the amount of such item shall be spread over what would have been the remaining life of the lease;

(c) If the lease has been canceled or forfeited and the remaining useful life of the improvement is in excess of what would have been the remaining life of the lease had the cancellation or forfeiture not occurred, then—

(1) An amount which bears the same ratio to the item of net abnormal income as the period which would have constituted the remaining life of the lease bears to the remaining useful life of the improvement shall be spread over what would have been the remaining life of the lease, and

(2) The remaining portion of the item shall be spread over the life of the lease, including what would have been its remaining life had the cancellation or forfeiture not occurred.

Amounts attributed to each future taxable year (including any taxable year beginning after December 31, 1941) are to be included in gross

income for such year for the purpose of computing the excess profits tax. See section 35.721-5. This paragraph may be illustrated by the following example:

Example. On January 1, 1929, the A Corporation, which makes its income tax returns on the calendar year basis, leased to the X Corporation an unimproved site. The latter corporation completed a building on this site on June 30, 1931. Such lease was for a period of 20 years and by its terms expired on December 31, 1948. On July 1, 1940, the lease is forfeited and the building comes into the possession and control of the A Corporation. The value of the building as of such date is \$100,000, and its remaining useful life is 16 years. The A Corporation did not, prior to 1940, derive gross income of this nature, nor did it report as gross income any amount with respect to the erection of the building. In 1940 there were no direct costs or expenses attributable to the realization of such income. The net abnormal income for this item is, therefore, \$100,000. Since the remaining useful life of the improvement is 16 years, but what would have been the remaining life of the lease is only $8\frac{1}{2}$ years, $\frac{8\frac{1}{2}}{16}$ of \$100,000, or \$53,125, is to be spread over what would have been the remaining life of the lease, *i. e.*, the last half of 1940, and the calendar years 1941 to 1948, both inclusive. Since there are 17 half-years in such period, $\frac{1}{17}$ of \$53,125, or \$3,125, is to be allocated to the last half of 1940, and $\frac{2}{17}$ of \$53,125, or \$6,250, to each of the calendar years 1941 to 1948, both inclusive. The remainder of the \$100,000 item, or \$46,875 (\$100,000 minus \$53,125), is to be spread over the years 1929 to 1948, both inclusive, *i. e.*, $\frac{1}{20}$ of \$46,875, or \$2,343.75, is to be allocated to each such year. The total amount allocable to each year is as follows:

Years:	Amount per year
1929-1939-----	\$2, 343. 75
1940—	
Portion of \$53,125 allocated to last half of year-----	3, 125. 00
Plus: Portion of \$46,825 allocated to such year-----	2, 343. 75
Total-----	5, 468. 75
1941-1948—	
Portion of \$53,125 allocated to each year-----	6, 250. 00
Plus: Portion of \$46,825 allocated to each year-----	2, 343. 75
Total-----	8, 593. 75

The amounts allocated to the years 1929 to 1939, both inclusive, will have no effect upon the computation of the excess profits tax. The amounts attributed to 1942 and subsequent years must be included

in gross income for such years for the purpose of computing the excess profits tax, as provided in section 35.721-5.

SEC. 35.721-10 DIVIDENDS ON STOCK OF FOREIGN CORPORATIONS OTHER THAN FOREIGN PERSONAL HOLDING COMPANIES.—The fifth class of potentially abnormal income specifically set forth in section 721(a) (2) is dividends on stock of foreign corporations, except foreign personal holding companies. This section is applicable only to the extent that such dividends are not excluded from excess profits net income under section 711(a) (2) (A), and therefore does not apply in the computation of the excess profits tax when the excess profits credit based on invested capital is used unless the stock on which the dividends were received is not a capital asset. In determining whether the class of income described in this section is abnormal or in excess of 125 percent of the average income of the same class for the four preceding taxable years, only dividends received from foreign corporations are to be taken into account. The exception relative to dividends from foreign personal holding companies applies both to distributions actually received from foreign personal holding companies and to constructive dividends deemed to have been received pursuant to section 337.

Items of net abnormal income of the class herein described are to be attributed to the years in which were accumulated the earnings and profits out of which the distributions were made, if accumulated after the acquisition by the distributee of the stock of the distributing corporation. If the earnings and profits out of which the distribution is made were accumulated prior to such acquisition, the income arising out of the distribution is to be attributed to the taxable year in which the stock was acquired. The earnings and profits out of which any distribution is made are, as provided in section 115, the most recently accumulated earnings and profits.

This section may be illustrated by the following example:

Example. The X Corporation, a domestic corporation, computing its excess profits credit on the income basis, acquired in 1938 all of the stock of the Y Company, Ltd., a foreign corporation, which is not a foreign personal holding company. The Y Company, Ltd., paid in July, 1942, a dividend to the X Corporation in the amount of \$100,000. The X Corporation did not previously receive dividends from this or any other foreign corporation. In 1942 there were no direct costs or expenses attributable to the receipt of this dividend. The \$100,000 is therefore a single item of net abnormal income. The Y Company, Ltd., had earnings and profits of \$75,000 in 1942 and \$125,000 in 1941. Following principles of existing law with respect to the source from which dividends are deemed to have been paid, the \$100,000 item of net abnormal income shall be allocated

between the years 1942 and 1941 in the respective sums of \$75,000 and \$25,000. See section 115(b) and corresponding provisions of prior revenue laws. For method of computation of the excess profits tax for the year 1942, see section 35.721-4 and the example in section 35.721-6.

SEC. 722. GENERAL RELIEF—CONSTRUCTIVE AVERAGE BASE PERIOD NET INCOME. [ADDED BY SEC. 201, SECOND REV. ACT 1940; AMENDED BY SEC. 6, EXCESS PROFITS TAX AMENDMENTS 1941, SEC. 202(g), REV. ACT 1941, SEC. 222(a), REV. ACT 1942, AND BY PUBLIC LAW 21 (SEVENTY-EIGHTH CONGRESS).]

(a) **GENERAL RULE.**—In any case in which the taxpayer establishes that the tax computed under this subchapter (without the benefit of this section) results in an excessive and discriminatory tax and establishes what would be a fair and just amount representing normal earnings to be used as a constructive average base period net income for the purposes of an excess profits tax based upon a comparison of normal earnings and earnings during an excess profits tax period, the tax shall be determined by using such constructive average base period net income in lieu of the average base period net income otherwise determined under this subchapter. In determining such constructive average base period net income, no regard shall be had to events or conditions affecting the taxpayer, the industry of which it is a member, or taxpayers generally occurring or existing after December 31, 1939, except that, in the cases described in the last sentence of section 722(b)(4) and in section 722(c), regard shall be had to the change in the character of the business under section 722(b)(4) or the nature of the taxpayer and the character of its business under section 722(c) to the extent necessary to establish the normal earnings to be used as the constructive average base period net income.

(b) **TAXPAYERS USING AVERAGE EARNINGS METHOD.**—The tax computed under this subchapter (without the benefit of this section) shall be considered to be excessive and discriminatory in the case of a taxpayer entitled to use the excess profits credit based on income pursuant to section 713, if its average base period net income is an inadequate standard of normal earnings because—

(1) in one or more taxable years in the base period normal production, output, or operation was interrupted or diminished because of the occurrence, either immediately prior to, or during the base period, of events unusual and peculiar in the experience of such taxpayer,

(2) the business of the taxpayer was depressed in the base period because of temporary economic circumstances unusual in the case of such taxpayer or because of the fact that an industry of which such taxpayer was a member was depressed by reason of temporary economic events unusual in the case of such industry,

(3) the business of the taxpayer was depressed in the base period by reason of conditions generally prevailing in an industry of which the taxpayer was a member, subjecting such taxpayer to

(A) a profit cycle differing materially in length and amplitude from the general business cycle, or

(B) sporadic and intermittent periods of high production and profits, and such periods are inadequately represented in the base period,

(4) the taxpayer, either during or immediately prior to the base period, commenced business or changed the character of the business and the average base period net income does not reflect the normal operation for the entire base period of the business. If the business of the taxpayer did not reach, by the end of the base period, the earning level which it would have reached if the taxpayer had commenced business or made the change in the character of the business two years before it did so, it shall be deemed to have commenced the business or made the change at such earlier time. For the purposes of this subparagraph, the term "change in the character of the business" includes a change in the operation or management of the business, a difference in the products or services furnished, a difference in the capacity for production or operation, a difference in the ratio of nonborrowed capital to total capital, and the acquisition before January 1, 1940, of all or part of the assets of a competitor, with the result that the competition of such competitor was eliminated or diminished. Any change in the capacity for production or operation of the business consummated during any taxable year ending after December 31, 1939, as a result of a course of action to which the taxpayer was committed prior to January 1, 1940, or any acquisition before May 31, 1941, from a competitor engaged in the dissemination of information through the public press, of substantially all the assets of such competitor employed in such business with the result that competition between the taxpayer and the competitor existing before January 1, 1940, was eliminated, shall be deemed to be a change on December 31, 1939, in the character of the business, or

(5) of any other factor affecting the taxpayer's business which may reasonably be considered as resulting in an inadequate standard of normal earnings during the base period and the application of this section to the taxpayer would not be inconsistent with the principles underlying the provisions of this subsection, and with the conditions and limitations enumerated therein.

(c) **INVESTED CAPITAL CORPORATIONS, ETC.**—The tax computed under this subchapter (without the benefit of this section) shall be considered to be excessive and discriminatory in the case of a taxpayer, not entitled to use the excess profits credit based on income pursuant to section 713, if the excess profits credit based on invested capital is an inadequate standard for determining excess profits, because—

(1) the business of the taxpayer is of a class in which intangible assets not includible in invested capital under section 718 make important contributions to income,

(2) the business of the taxpayer is of a class in which capital is not an important income-producing factor, or

(3) the invested capital of the taxpayer is abnormally low.

In such case for the purposes of this subchapter, such taxpayer shall be considered to be entitled to use the excess profits credit based on income, using the constructive average base period net income determined under subsection (a). For the purposes of section 713(g) and section

743, the beginning of the taxpayer's first taxable year under this subchapter shall be considered to be that date after which capital additions and capital reductions were not taken into account for the purposes of this subsection.

(d) **APPLICATION FOR RELIEF UNDER THIS SECTION.**—The taxpayer shall compute its tax, file its return, and pay its tax under this subchapter without the application of this section, except as provided in section 710(a)(5). The benefits of this section shall not be allowed unless the taxpayer, not later than six months after the date prescribed by law for the filing of its return, or if the application relates to a taxable year beginning after December 31, 1939, but not beginning after December 31, 1941, prior to September 16, 1943, makes application therefor in accordance with regulations to be prescribed by the Commissioner with the approval of the Secretary, except that if the Commissioner in the case of any taxpayer with respect to the tax liability of any taxable year—

(1) issues a preliminary notice proposing a deficiency in the tax imposed by this subchapter such taxpayer may, within ninety days after the date of such notice make such application, or

(2) mails a notice of deficiency (A) without having previously issued a preliminary notice thereof or (B) within ninety days after the date of such preliminary notice, such taxpayer may claim the benefits of this section in its petition to the Board or in an amended petition in accordance with the rules of the Board.

If the application is not filed within six months after the date prescribed by law for the filing of the return, or if the application relates to a taxable year beginning after December 31, 1939, but not beginning after December 31, 1941, prior to September 16, 1943, the operation of this section shall not reduce the tax otherwise determined under this subchapter by an amount in excess of the amount of the deficiency finally determined under this subchapter without the application of this section. If a constructive average base period net income has been determined under the provisions of this section for any taxable year, the Commissioner may, by regulations approved by the Secretary, prescribe the extent to which the limitations prescribed by this subsection may be waived for the purpose of determining the tax under this subchapter for a subsequent taxable year.

(e) **RULES FOR APPLICATION OF SECTION.**—For the purposes of this section—

(1) the tax imposed by this subchapter shall be the tax before the allowance of the foreign tax credit pursuant to section 729 (c) and (d);

(2) in the case of a taxpayer, the average base period net income of which is computed under Supplement A, for the period for which the income of any other person is included in the computation of the average base period net income of the taxpayer, the taxpayer shall be treated as if such other person's business were a part of the business of the taxpayer.

(f) **MINING CORPORATIONS.**—In the case of a taxpayer to which section 711(a)(1)(I) or section 711(a)(2)(K) applies, if its constructive average base period net income is established under this section, there shall also be determined a fair and just amount to be used as normal output and normal unit profit for the purposes of section 735.

SEC. 35.722-1 GENERAL RULE.—Section 722 provides for the extension of excess profits tax relief for taxable years beginning after December 31, 1939, to any taxpayer subject to the excess profits tax which satisfies the conditions and limitations expressed in such section. Relief is available whether the actual excess profits credit of the taxpayer is based on income or on invested capital and regardless of when the first excess profits tax taxable year of the taxpayer begins. A taxpayer which claims relief and which is entitled to use the excess profits credit based on income under section 713 or Supplement A, regardless of which excess profits credit is actually used in computing the excess profits tax on its return, must establish that its business during the base period falls into one or more of the categories described in section 722(b) in order to be eligible for relief. A taxpayer is considered to be entitled to use the excess profits credit based on income even though the excess profits credit based on invested capital produces a lower tax than the excess profits credit based on income (computed without the benefit of section 722) for any excess profits tax taxable year for which a claim for relief is made. A taxpayer which claims relief under section 722 and which is not entitled to use the excess profits credit based on income under section 713 or Supplement A must establish that its invested capital falls into one or more of the categories specified in section 722(c) in order to become eligible for relief under section 722. In either case, once eligibility for relief is established, the taxpayer will be deemed to be entitled to use the excess profits credit based on income and any relief to be extended under section 722 shall be in the form of a constructive average base period net income.

SEC. 35.722-2 CONSTRUCTIVE AVERAGE BASE PERIOD NET INCOME.—

(a) *In general.*—If a taxpayer establishes

(1) that the excess profits tax determined without regard to the provisions of section 722 results in an excessive and discriminatory tax, and

(2) what would be a fair and just amount representing normal earnings to be used as a constructive average base period net income for the purposes of an excess profits tax based upon a comparison of normal earnings and earnings during an excess profits tax period,

the excess profits tax for the taxable year shall be determined by using the excess profits credit computed upon the basis of such constructive average base period net income in lieu of the actual excess profits credit based on income or invested capital, as the case may be.

The excess profits tax is excessive and discriminatory if in the instances described in section 722(b) the excess profits credit based

on income is an inadequate standard of normal earnings or if in the instances described in section 722(c) the excess profits credit based on invested capital is an inadequate standard for determining excess profits. Excessive and discriminatory taxation may result if, in a proper case, the taxpayer is not allowed to compute its unused excess profits credit for purposes of the unused excess profits credit adjustment for prior or subsequent years upon the basis of the excess profits credit based on constructive average base period net income in lieu of the actual excess profits credit. For what constitutes an excessive and discriminatory tax, computed without the provisions of section 722, see sections 35.722-3 and 35.722-4.

The constructive average base period net income is a fair and just amount representing normal earnings to be attributed to the taxpayer with respect to years prior to the excess profits tax return period for the purposes of establishing a standard to be used in the computation of an excess profits tax based upon a comparison of normal earnings and earnings during the excess profits tax period. The determination of such constructive average base period net income must be made without regard to events or conditions affecting the taxpayer, the industry of which it is a member, or taxpayers generally occurring after December 31, 1939. Such events or conditions are deemed to be integral parts of the war economy; they cannot therefore be accepted as either accurate or reliable determinants of normal operations or normal earnings. Thus high war prices, swollen demand, and other factors which would not be normal in the experience of the business for years prior to the imposition of the excess profits tax shall not be considered in determining the normal earnings of the taxpayer. However, in certain cases involving a change in the character of the business consummated during a taxable year ending after December 31, 1939, as described in the last sentence of section 722(b)(4) (see section 35.722-3(d)), and in the case of a taxpayer first coming into existence as described in section 722(c) (see section 35.722-4), regard shall be had to such change in the character of the business under section 722(b)(4) or to the nature of the taxpayer and the character of its business under section 722(c) to the extent necessary to establish the normal earnings to be used as the constructive average base period net income.

(b) *Rules for determination.*—The determination of the constructive average base period net income must depend in each instance upon the facts and circumstances presented by the taxpayer and upon the provisions of section 722 forming the basis of the taxpayer's contention that its excess profits tax is excessive and discriminatory, i. e., if the taxpayer is entitled to use the excess profits credit based on income, the reasons why such credit is an inadequate standard of

normal earnings, or if the taxpayer is not entitled to use such credit, the reasons why the excess profits credit based on invested capital is an inadequate standard for determining excess profits. No single test or standard of universal application can be prescribed pursuant to which every taxpayer must establish the fair and just amount representing normal earnings to be used as its constructive average base period net income. However, the following principles and rules must be observed in every case in which a constructive average base period net income is determined:

(1) Section 722(a) provides for the determination of a constructive average base period net income to be used in lieu of the actual average base period net income in those cases to which section 722 is applicable. Since the constructive average base period net income is the fair and just amount representing normal earnings, a taxpayer in computing such amount is not, as a matter of right, entitled to use the rules provided by section 713(e)(1), relating to increase in base period net income of lowest year of base period, or by section 713(f), relating to average base period net income in case of increased earnings in last half of base period. However, in a proper case the principles underlying sections 713(e)(1) and 713(f) may be taken into account if and to the extent that the application of such principles is reasonable and consistent with the conditions and limitations of section 722 and of such sections.

(2) If normal earnings are reconstructed for poor years within the base period of a taxpayer, the fair and just amount representing normal earnings determined with respect to such period cannot reasonably include above-normal earnings for other years in the base period. Consequently, if the constructive average base period net income involves a reconstruction of normal earnings for one or more taxable years in the base period, the taxpayer must be able to establish that the actual excess profits net income for other taxable years in the base period is not unusually large. Unusually large excess profits net income may occur either as the result of abnormally large gross income or as the result of abnormally low deductions. Thus if a manufacturing corporation, which was in existence throughout the base period, had a fire in 1937 which seriously interrupted production and caused an operating loss for such year but enjoyed exceptionally high earnings in 1938 as a result of production and sales which normally would have been enjoyed in 1937 and 1938, the excess profits net income for 1937 cannot be reconstructed upon the basis of normal earnings without also reconstructing excess profits net income for 1938 so as to eliminate the effects of the duplicated production and income for such year. Likewise, if in 1939 the taxpayer had exceptionally high earnings because of increased sales due primar-

ily to a fire interrupting the production of its chief competitor, the income for 1939 must be adjusted to eliminate the effects of such unusual circumstance. However, no adjustment shall be made to eliminate income due to more favorable general business conditions.

Excess profits net income shall be considered unusually large in a taxable year in the base period only if, as the result of physical or economic circumstances unusual and peculiar in the case of the taxpayer, the income for such year is larger than it would have been if such circumstances had not occurred. Increased income due to circumstances which have affected business in general and which have caused an increase in the earnings of business in general, or due to circumstances which would not be considered unusual and peculiar in the experience of the taxpayer shall not be deemed to result in unusually large excess profits net income. If excess profits net income for a taxable year is determined to be unusually large, gross income and deductions shall be recomputed so as to remove the effect of the unusual circumstances in the computation of excess profits net income for such year.

(3) Except as otherwise provided, the constructive average base period net income shall be computed with regard to the principles in section 711(b) (relating to excess profits net income for taxable years in the base period) applicable to the taxable year for which the constructive average base period net income is used. The rules provided by section 711(b)(1) (H), (I), (J), and (K), relating to abnormal deductions and costs, may not be used as a matter of right in computing the constructive average base period net income. In a proper case, however, the principles underlying section 711(b)(1) (H), (I), (J), and (K) may be taken into account if and to the extent that the application of such principles is reasonable and consistent with the conditions and limitations of section 722 and of such section.

(4) If the taxpayer has acquired the business of any other person (corporation, partnership, or individual) hereafter called "a component corporation" in a transaction which enables the taxpayer to compute its average base period net income under the provisions of Supplement A, the business of such component corporation shall be considered to be a part of the business of the taxpayer for the period for which the income of such component corporation is included in the computation of the average base period net income of the taxpayer under Supplement A. A taxpayer which has acquired, in a transaction which constitutes it an acquiring corporation under Supplement A, a component corporation for which a constructive average base period net income has been finally determined and has been used by such component in a taxable year

prior to its acquisition, cannot as a matter of right use such constructive average base period net income in the determination of its average base period net income under Supplement A. The taxpayer as an acquiring corporation must establish, in accordance with the provisions of section 722(e) (2), the amount which, in the light of such provisions, would constitute a fair and just amount representing normal earnings to be used as its constructive average base period net income. If the taxpayer has during the base period acquired substantially all the assets of another corporation in a transaction which does not constitute the taxpayer an acquiring corporation within the provisions of Supplement A, and after such transaction such other corporation ceases business, the business of such other corporation attributable to the assets acquired may be considered to be a part of the business of the taxpayer during the base period, to the extent to which it does not duplicate the business of the taxpayer otherwise carried on.

(5) If a taxpayer which, for the purposes of the income tax imposed by Chapter 1, computes its income from installment sales under the method provided by section 44(a) elects to compute such income for excess profits tax purposes under Subchapter E of Chapter 2 upon the accrual basis pursuant to section 736(a), any constructive average base period net income established with respect to such taxpayer shall be determined under the accounting methods underlying the computation of income from installment sales followed by the taxpayer in computing its income tax for the base period.

(6) If a taxpayer elects under the provisions of section 736(b) to compute income from contracts the performance of which requires more than 12 months upon the percentage of completion method of accounting, any constructive average base period net income established with respect to such taxpayer shall be determined in accordance with the principles underlying the percentage of completion method of accounting. See section 29.42-4(a) of Regulations 111.

(7) If an affiliated group of corporations makes a consolidated excess profits tax return under section 141 for a taxable year beginning after December 31, 1941, any constructive average base period net income must be established with respect to the group as a unit and no constructive average base period net income shall be established separately for any member of the group. If the members of an affiliated group for which a constructive average base period net income has been established are different during the taxable year from the members at the time such constructive average base period net income was established (because new members have been acquired by the group or because old members have ceased to remain members) or if one or more members of the group have become acquiring corporations of

component corporations pursuant to Supplement A, the group may not as of right continue to use the constructive average base period net income previously established but must establish a new constructive average base period net income predicated upon the membership of the group for the taxable year for which relief is claimed. No constructive average base period net income determined with respect to any member of the group prior to the year for which the group makes a consolidated excess profits tax return shall be used by the group as a matter of right in computing its actual average base period net income. If a taxpayer ceases to be a member of an affiliated group which, during the time that such taxpayer was a member, made a consolidated excess profits tax return and used a constructive average base period net income in the computation of its excess profits tax, such taxpayer shall not use any portion of such constructive average base period net income in the computation of its separate excess profits tax or the excess profits tax of another affiliated group of which it becomes a member. Any constructive average base period net income to be used by such taxpayer or by such other group must be established solely with respect to such taxpayer or such group.

(8) For the purposes of section 722 and of section 35.722-3(b) and (c), no exclusive definition of the concept "industry" can be constructed. In general an industry may be said to include a group of enterprises engaged in producing or marketing the same or similar products or services under analogous conditions which are essentially different from those encountered by other enterprises. The mere similarity of product and marketing methods, however, is not enough of itself to comprehend taxpayers satisfying such conditions within the same industry. Factors such as geographical location, character and location of markets, availability and character of raw material supply, and other conditions under which operations are carried on must be considered. Regard may be had to trade custom and practice in determining whether a group of enterprises constitutes an industry.

(9) The fact that the excess profits tax liability of a taxpayer, establishing eligibility for relief and a constructive average base period net income under section 722, is zero or is very small prior to the application of such section does not prevent the actual average base period net income from being an inadequate standard of normal earnings. Such a taxpayer is entitled to use the constructive average base period net income established under section 722 in the computation of its excess profits tax for all excess profits tax taxable years, and to compute its unused excess profits credit for any excess profits tax taxable year with respect to the excess profits credit based upon such constructive average base period net income. However, in the case of a taxpayer which is deemed to have commenced business or to have changed

the character of its business two years prior to the actual event, in the case of a taxpayer consummating a change in the capacity for production or operation in a taxable year beginning after December 31, 1939, as a result of a course of action to which it was committed prior to January 1, 1940, in the case of a taxpayer which prior to May 31, 1941, acquired from a competitor engaged in the dissemination of information through the public press substantially all the assets of such competitor employed in such business with the result that competition between the taxpayer and the competitor existing before January 1, 1940, was eliminated, or in the case of a taxpayer which commenced business after December 31, 1939, the constructive average base period net income might vary from one excess profits tax taxable year to another. As to the determination of the constructive average base period net income in such cases, see section 35.722-3(d) and section 35.722-4.

(c) *Excess profits credit based on constructive average base period net income.*—For any excess profits tax taxable year for which a constructive average base period net income has been determined under the provisions of section 722 and of this section, the excess profits credit based on income shall be an amount equal to—

(1) 95 percent of the constructive average base period net income determined under section 722;

(2) plus 8 percent of the net capital addition defined in section 713(g) computed with regard to the provisions of section 722(c); or

(3) minus 6 percent of the net capital reduction defined in section 713(g) computed with regard to the provisions of section 722(c).

(d) *Normal output and normal unit profit in case of producers of minerals or timber.*—Nontaxable income from exempt excess output of mines or timber blocks determined under section 735 (relating to nontaxable income from certain mining and timber operations) may be excluded under section 711(a)(1)(I) or section 711(a)(2)(K) from the excess profits net income of a taxpayer for which there is established under section 722 a constructive average base period net income. For the purposes of computing nontaxable income from exempt excess output under section 735 in such a case, there shall be determined with respect to each mineral property as defined in section 735(a)(6), or timber block as defined in section 735(a)(8), in which an economic interest is owned by the taxpayer, a fair and just amount to be used as the normal output as defined in section 735(a)(5), and with respect to such mineral property, a fair and just amount to be used as the normal unit profit as defined in section 735(a)(9). However, no amounts representing fair and just normal output or normal

unit profit for such base period shall be established for any mineral property or timber block unless the constructive average base period net income is predicated in whole or in part upon normal earnings attributable directly to such mineral property or timber block, unless such mineral property or timber block was in operation for at least six months during the taxable years beginning after December 31, 1935, and not beginning after December 31, 1939, of the person owning the mineral property or timber block (whether or not the taxpayer), and in the case of a timber block, unless such timber block was in existence and was acquired by the taxpayer prior to January 1, 1942. A normal output and a normal unit profit may be established for a mineral property or a timber block in which an economic interest is owned by the taxpayer despite the fact that such taxpayer came into existence after December 31, 1939, if such mineral property or timber block meets the requirements provided in the preceding sentence.

SEC. 35.722-3 DETERMINATION OF EXCESSIVE AND DISCRIMINATORY TAX; TAXPAYER ENTITLED TO EXCESS PROFITS CREDIT BASED ON INCOME.—The excess profits tax, computed without regard to the provisions of section 722, for any taxable year shall be considered to be excessive and discriminatory in the case of a taxpayer entitled to use the excess profits credit based on income pursuant to section 713 (or pursuant to Supplement A if the taxpayer is an acquiring corporation under Supplement A) if its actual average base period net income is an inadequate standard of normal earnings for one or more of the following reasons—

(a) *Interruption or diminution of normal production, output, or operation in the base period.*—If the taxpayer establishes that in one or more taxable years in its base period normal production, output, or operation was interrupted or diminished because of the occurrence either immediately prior to, or during the base period, of events unusual and peculiar in the experience of the taxpayer, the average base period net income shall be considered to be an inadequate standard of normal earnings. Activities comprised within the meaning of production, output, or operation include the rendering of services in those cases in which corporations render services rather than manufacture or market tangible products, as for example advertising agencies, brokerage concerns, purchasing agents, etc. Normal production, output, or operation means the level of production, output, or operation which would have been reached by the business of the taxpayer had the unusual and peculiar events not occurred.

Not every interruption or diminution of normal production, output, or operation in the base period may furnish the basis of a claim for relief under section 722. The interruption or diminution must be

a direct result of events unusual and peculiar in the experience of the taxpayer, and must occur in or immediately prior to the base period. A direct result of an unusual or peculiar event is a result which would occur as a normal consequence or effect of the event and one to which the event bears a casual relationship. The diminution or interruption of normal production, output, or operation may occur not only in the year in which such event occurs but may result in a later year directly affected by such event.

An event is deemed to occur immediately prior to the base period if under normal circumstances the effect of such event would not be fully manifested until a year in the base period and such effect is directly related to such occurrence. An event is unusual and peculiar in the experience of the taxpayer if its occurrence is not ordinarily encountered in such experience. The fact that such event unusual in the case of the taxpayer is also unusual in the case of other taxpayers, as in the case of a flood in a particular locality, is no bar to a claim for relief under section 722(b) (1). If an event is unusual in the course of normal business experience in general but regular in the case of the taxpayer, such event is not unusual and peculiar in the experience of the taxpayer. Thus, if a corporation is engaged in felling and transporting logs and timber, and if its annual operations are interrupted by spring floods occasioned by thaws and rains, such events are not unusual and peculiar in the experience of the taxpayer. Unusual and peculiar events contemplated in section 722(b) (1) consist primarily of physical rather than economic events or circumstances. Except as otherwise described in this paragraph, such events would include floods, fires, explosions, strikes, and other such exceptional and uncommon circumstances hindering production, output, or operation; such events would not include economic maladjustments such as higher prices of materials, labor, capital, or any other agent of production, unusually low selling price of the product of the taxpayer, or unusually low physical volume of sales owing to low demand for such product or for the output of the taxpayer. However, a diminution in the taxpayer's production caused by a low demand for the product of the taxpayer resulting from the effects of war conditions in the country in which the taxpayer sold a substantial portion of its products may be an event which might form the basis of a claim for relief under section 722(b) (1).

The taxpayer's normal production, output, or operation for those years in which interruption or diminution has been established may be determined by reference to its average production, output, or operation with respect to products or services of the same class. This determination may be made in the light of the experience of the tax-

payer prior to its first excess profits tax taxable year (but not after May 31, 1940) or in the light of the experience of a comparable competitor or of an industry of which the taxpayer is a member, engaged in manufacturing or selling the same products or rendering the same services. No particular years or specific number of years in such experience need be selected in establishing normal production, output, or operation. However, normal earnings reconstructed for one or more taxable years in the base period or for the base period as a whole on account of an interruption or diminution in production, output, or operation, must be determined in the light of business conditions prevailing during such period. Among the material factors to be considered are general business conditions, business conditions together with the taxpayer's competitive position in an industry of which the taxpayer is a member, and demand for the products or services of a class produced or rendered by the taxpayer. The cost of materials, labor, capital, or any other agent of production, the selling price of the product or the service, the physical volume of sales resulting from the demand for such products or services during the base period are also factors to be taken into account.

Thus, assume that, except for the year 1938 in which the taxpayer experienced an explosion in its plant which interrupted production and caused an operating loss for the year, the base period represented a period of normal earnings for the taxpayer. Such period also represented a period of normal earnings for the industry of which the taxpayer is a member. In the year 1938 the demand for the product manufactured by the industry of which the taxpayer is a member was 20 percent below the demand for such product for the average of the other years in the base period. The taxpayer's normal production and normal earnings for 1938 should be reconstructed upon the basis of the actual demand in that year, rather than upon the basis of the demand for the remaining years in the base period.

(b) *Business depression in base period on account of temporary economic circumstances.*—If the taxpayer establishes that its business was depressed in the base period because of temporary economic circumstances unusual in the case of such taxpayer or because of the fact that an industry of which the taxpayer was a member was depressed by reason of temporary economic circumstances unusual in the case of such industry, the average base period net income of the taxpayer shall be considered to be an inadequate standard of normal earnings. For the purposes of this subsection a business shall be considered to be depressed if it realized low earnings or operating losses which resulted from such factors as a low volume of output of products or services, from a low volume of sales, from high manufacturing costs, from low sales price, or from a combination of such factors.

Only those economic circumstances which were temporary in the sense that they had little perceptible effect upon the long run prospects of a business, and which affected the taxpayer alone or an industry of which it was a member as distinguished from those economic events which were of a chronic or continuing character or which affected business in general, may furnish a basis for a claim for relief under section 722(b)(2). An economic circumstance is temporary depending upon the character and nature of such circumstances rather than upon the mere length of time of its existence. Thus, the income of a declining business or industry which was depressed throughout the base period because of economic conditions of a chronic and continuing character which may be expected to depress the earnings of such business for an indefinite period is not an inadequate standard of normal earnings under section 722(b)(2). For example, a traction company the earnings of which had been steadily reduced over a decade by increasing competition with motor trucks and by the use of private passenger vehicles might not be considered to suffer business depression by reason of temporary and unusual economic circumstances. Higher income resulting from increased patronage due to wartime restrictions upon the use of alternative methods of transportation should reasonably be regarded as excess profits. Low earnings are entirely normal in the case of such a chronically depressed taxpayer and are not rendered subnormal merely because an increased level of profits resulting from the effect of war conditions occurs during excess profits tax taxable years.

High costs of production because of high costs of material, labor, capital, or other elements of production, low selling price of the finished product, low volume of sales due to a low demand for such product or the taxpayer's output, or other ordinary economic hazards to which business in general is subject and which have the effect temporarily of depressing income are ordinarily not sufficiently unusual economic circumstances to constitute income an inadequate standard of normal earnings under section 722(b)(2). Such circumstances are to be expected during any period of normal earnings and are presumed to have been offset by counterbalancing economic circumstances causing higher than average profits in other years in the base period. Consequently, the presence of unfavorable economic factors during the base period years of a taxpayer is not unusual when the presence of such factors is usual in the case of an industry of which the taxpayer is a member, or if such industry is depressed, in the case of business in general for such years. Nevertheless unusual and temporary economic circumstances reflected in one or more of such factors may depress the business of the taxpayer substantially beyond the extent to which other members of an industry of which the taxpayer is a member

are affected, or may depress the industry (including the taxpayer) substantially beyond the extent to which other industries are affected. In such case the presence of such circumstances is an adequate reason for establishing that actual average base period net income is an inadequate standard of normal earnings. However, the mere fact that the business of the taxpayer or of an industry of which it is a member, as the case may be, fluctuates widely under the impact of economic events or is operated at a lower level of earnings than other members of such industry or other industries, as the case may be, and thus is depressed to a greater degree by unfavorable economic conditions than such other members or industries does not of itself indicate that average base period net income is an inadequate standard of normal earnings.

As in the case of unusual and peculiar physical events interrupting or diminishing production, output, or operation (see section 35.722-3(a)), a temporary economic circumstance is unusual in the case of a taxpayer or of an industry if its occurrence is not ordinarily encountered in the experience of such taxpayer or industry. However, a temporary economic circumstance which is usual in the case of the taxpayer is not rendered unusual because such circumstance is unusual in the case of an industry of which the taxpayer is a member or in the course of normal business experience in general. As to the definition of an "industry", see section 35.722-2(b)(8).

An example illustrating section 35.722-3(b) might be a taxpayer which for a long period of years conducted business with one customer which it lost during the base period because such customer decided to manufacture for itself the product it had formerly bought from the taxpayer. The taxpayer would be compelled to develop a new market. The average earnings of the taxpayer for the period of time during which the taxpayer was engaged in obtaining new customers would not represent an adequate standard of its normal earnings and would be sufficient cause for the establishment of a constructive average base period net income under section 722.

An example in which temporary economic events caused business depression during the base period of an industry of which the taxpayer was a member would be an industry the members of which (including the taxpayer) were engaged in a ruinous price war during several of the base period years. As a result of sales below cost in such years, the members of the industry sustained severe losses; when the price war was ended, the members again realized normal average earnings. The business of the taxpayer in such case would be depressed during the base period because of the fact that an industry of which the taxpayer was a member was depressed by reason of temporary economic events unusual in the case of such industry and the

average base period net income of such taxpayer would be an inadequate standard of normal earnings.

If the temporary economic circumstances causing the taxpayer to be depressed in the base period did not affect an industry of which the taxpayer was a member, the constructive average base period net income of the taxpayer may be established in the same manner as is prescribed in the case of a taxpayer the base period production, output, or operation of which was interrupted or diminished by events unusual and peculiar in its experience. See section 35.722-3(a). However, since the actual economic conditions existing in the years for which depression is claimed are those which caused such depression, normal earnings should be reconstructed not upon the basis of the actual economic factors affecting the taxpayer's production, costs, sales, and profits in such years but upon the basis of such factors as existed in such years in the case of the industry of which the taxpayer was a member. Relationships existing between the taxpayer's production, costs, sales, and profits and the average production, costs, sales, and profits of the industry or other members of the industry, in other periods determined to represent periods of normal earnings for the taxpayer and the industry, or other members of the industry, may be utilized in determining the taxpayer's production, costs, sales, and profits for the base period. Depending upon the particular circumstances in the taxpayer's case normal earnings might be reconstructed for each base period year in which the taxpayer was depressed, or a constructive average base period net income might be determined for the base period as a whole without a reconstruction for separate years.

If the taxpayer was depressed in the base period because an industry of which it was a member was depressed by reason of temporary economic circumstances unusual in the case of such industry, the constructive average base period net income of the taxpayer might be determined by reference to a prior period in the experience of the taxpayer, or of an industry in which it is a member, which is established to be a period of normal earnings, or possibly by reference to the base period experience of comparable taxpayers or industries. Since actual economic conditions prevailing in the base period of the taxpayer were those which had the effect of causing depression in the industry of which the taxpayer was a member, such conditions should not form the basis upon which normal earnings of the taxpayer are reconstructed if such reconstruction is made for any of the years in the base period of the taxpayer or for such period in its entirety. In such case, relationships established between the economic conditions present in the case of the taxpayer during other periods and such conditions in the case of comparable taxpayers or industries may be used in determining the taxpayer's production, costs, sales, and

profits which would have been realized had the temporary and unusual economic circumstances not affected the industry of which it was a member.

(c) *Business depression in base period because of variant profits cycle or sporadic and inadequately represented profits periods.*—If the taxpayer establishes that its business was depressed in the base period by reason of conditions generally prevailing in an industry of which the taxpayer was a member subjecting such taxpayer either to a profits cycle which differs materially in length and amplitude from the general business cycle or to sporadic and intermittent periods of high production and profits, and such periods are inadequately represented in the base period, the average base period net income of the taxpayer shall be considered to be an inadequate standard of normal earnings. To come within the provisions of section 722(b)(3) and this subsection, it must be shown that the business of the taxpayer was depressed in the base period as a consequence of circumstances which are ordinary and usual in the case of an industry of which the taxpayer is a member; such business depression may not result from extraordinary and unusual events such as are necessary to invoke the provisions of section 722(b)(2) and section 35.722-3(b). Furthermore, the conditions producing the unusual profits cycle or the sporadic profits of the taxpayer must be shown to have prevailed generally throughout the past history of the industry and not to be peculiar to the base period alone. The ordinary circumstances existing in the case of the industry of which the taxpayer is a member and which produce business depression in the case of the taxpayer must also be established by the taxpayer to have produced business depression with respect to the industry generally during the base period. As to the definition of "industry" see section 35.722-2(b)(8).

(1) *Unusual profits cycle.*—No categorical definition or description can be given to the concept of the general business cycle. The term does not refer to any particular business index prepared by any public or private financial, economic, or statistical organization, or combination of such indices. A taxpayer does not establish a claim for relief under section 722(b)(3)(A) merely by comparing its own profits cycle, or the profits cycle of an industry of which it is a member, with one or more general business indices prepared by any public or private financial, economic, or statistical organization, and by showing a variance between its own profits cycle and such other general business indices.

On a national industry-wide basis, the four years beginning January 1, 1936, and ending December 31, 1939, represent a period of normal average earnings in the experience of business in general. If, due to conditions entirely normal in the experience of an industry of which

the taxpayer was a member, such period was not correspondingly a time of normal average earnings in the case of the industry and of the taxpayer in the light of the prior experience of such industry and taxpayer, the profits cycle of the taxpayer may be considered to be different from the general profits cycle.

The profits cycle of a taxpayer will be deemed to differ in length and amplitude from the general business cycle if its period of normal profits has not occurred during the base period but at some prior time entirely without the base period, or partly without and partly within such period. It is not necessary that the length of the taxpayer's profits cycle be longer or shorter than four years nor is it necessary that the crests and troughs of such profits cycle vary from the level of high and low profits of the general business cycle. Only in case the normal average earnings of the taxpayer and an industry of which it is a member are substantially greater than the average profits earned during the excess profits tax base period will the profits cycle of a taxpayer be considered to differ materially from the general business cycle.

The mere fact that the earnings of the taxpayer and an industry of which it was a member are not as high during the base period as they were during some prior period in the experience of such taxpayer or such industry does not necessarily mean that normal average earnings are greater than earnings during the base period. Normal average earnings are average earnings for all periods of normal earnings in the experience of such taxpayer or such industry. It is inevitable that some periods of normal earnings should be higher or lower than other such periods. Consequently the fact that the earnings of the taxpayer and of an industry of which it is a member are slightly lower than the level of normal average earnings is not of itself an indication that the profits cycle of the taxpayer or the industry varies materially from the general business cycle.

A taxpayer which claims to be a member of an industry in which conditions prevail which subject the taxpayer to a profits cycle differing materially from the general business cycle must establish that the business experience both of itself and of such industry is susceptible of segregation into a cyclical pattern. Types of industries, the business cycles of which may not necessarily coincide with the general business cycle, are industries connected with the construction industry. It is well established that over the past three decades there has been a building cycle which generally has embraced two or more of the general cycles of business profits. If the base period embraced only the subnormal years of the profits cycle of a branch of the building industry, the members thereof may be able to establish that their average base period net income does not represent an adequate standard of

normal profits. If, however, the profits cycle of such branch of the building industry and of the taxpayer in a particular locality in which the operations of such branch and of the taxpayer were encompassed followed the pattern of the general business cycle in the base period so that such period represented a period of average normal profits for the taxpayer, no basis would exist for a claim for relief under section 722(b) (3) (A).

The constructive average base period net income of a taxpayer which was depressed in the base period on account of a variant profits cycle might be determined by reference to one or more prior periods in the experience of the taxpayer or of the industry of which it was a member which represents a period of normal earnings properly attributable to such taxpayer. These periods need be of no specified duration except that they should not be less than three years. If any one such period is used it should be established that with respect to the taxpayer and the industry of which it was a member, such period bears the same relationship to the profits cycle of the taxpayer and the industry which the base period (representing a period of normal earnings of business in general) bears to the general business cycle. In case no such prior periods are available, if proper relationships based upon comparative profit and loss statements and balance sheets can be established, the constructive average base period net income might be determined by reference to the average base period net income of comparable taxpayers or industries for which the base period represents a period of normal earnings. In such case, actual economic factors of production, costs, demand, sales, and profits experienced by the taxpayer during the base period should not generally serve as a limitation upon any normal earnings reconstructed for the taxpayer for the base period.

(2) *Sporadic profits inadequately represented in the base period.*—The characteristic distinguishing the type of case described in section 722(b) (3) (B) from that in section 722(b) (3) (A) is that in the latter case the taxpayer has an earnings experience which can be segregated into definite cycles, whereas in the former case (the type of case described in this paragraph) no such cyclical segregation can be made. In case the taxpayer is subjected to intermittent periods of high production and profits, the prosperous years of the taxpayer will occur at irregular and unpredictable intervals, and may depend upon fortuitous combinations of advantageous circumstances, as for example the juxtaposition of a good crop and a good market. If the base period of the taxpayer does not include these prosperous years, its earnings during such period will not be an adequate measurement of average normal earnings.

Proof that a year of high production and profits did not occur during the base period is not of itself sufficient to establish that the base

period did not represent a period of normal earnings. The actual average base period net income computed under section 713(d) may approximate either the average earnings of periods of normal earnings, which include years of very high profits as well as years of low profits, or the average earnings for the entire experience of the taxpayer. Consequently it must be established not only that the base period did not include one or more years of high profits irregularly experienced by the taxpayer but also that the level of earnings for periods of average normal earnings which include such years, or the level of earnings for the entire period in which the taxpayer was in existence is substantially higher than the level of earnings during the base period. Since the concept of normal earnings does not contemplate a fixed and inflexible amount but envisions a level of earnings which represents normal earning capacity of a business, the mere fact that actual average base period net income is less than an amount which might be determined by reference to some period claimed to represent normal earnings or by reference to an average of earnings over the entire economic life of a business does not establish that such average base period net income is an inadequate standard of normal earnings.

A taxpayer which claims to be a member of an industry in which conditions prevail which subject the taxpayer to sporadic and intermittent periods of high production and profits must establish that business depression was encountered during the base period because of such conditions. It must also establish that such conditions were not peculiar to it alone in the base period but were also present in the case of such industry.

A taxpayer does not establish eligibility for relief under section 722(b)(3)(B) merely by showing that annual periods of high profits have occurred irregularly in the past experience of the taxpayer. Such periods of high earnings may have resulted from windfall profits or from unusual circumstances befalling the taxpayer, or an industry of which it is a member, and not as the result of normal conditions under which the taxpayer's usual operations are carried on. Only in case high earnings which have occurred in prior years are directly attributable to factors normal in the case of the taxpayer and of an industry of which it is a member, may such high periods of production and profits be considered grounds for relief under section 722(b)(3)(B).

Depending upon actual proof, a possible example of an industry operating under conditions which subject its members to sporadic and intermittent periods of high production and profits might be an industry engaged in the preparation and canning of fruit. Profits would be dependent upon the size of the pack and the market obtainable.

Suppose that the records of a taxpayer in such industry indicate that ordinarily in one out of every three years the earnings were substantially in excess of the average of the other three years, and that no prosperous years occurred in the base period, as follows:

Net income (in thousands of dollars)

1926.....	50	1933.....	25
1927.....	10	1934.....	20
1928.....	15	1935.....	48
1929.....	55	1936.....	15
1930.....	12	1937.....	28
1931.....	45	1938.....	18
1932.....	18	1939.....	10

If the records of the industry of which the taxpayer is a member show a similar pattern, the average base period net income of such concern would not be deemed to be an adequate standard of normal earnings and such taxpayer would be entitled to relief under section 722(b) (3) (B).

The constructive average base period net income of a taxpayer depressed during the base period on account of the failure of such period to reflect one or more years of high profits sporadically enjoyed by the taxpayer might be determined in the same manner as in the case of a taxpayer with a variant profits cycle. See section 35.722-3 (c) (1). In a proper case a standard of normal earnings might fairly be determined as an average of earnings of the business in its experience prior to the beginning of its first excess profits tax taxable year (but not after May 31, 1940), and a reasonable determination of excess profits could be made as the excess of the profits during a current excess profits tax taxable year over such standard.

(d) *Commencement or change in character of business.*—If the taxpayer has commenced business or has changed the character of its business either during or immediately prior to the base period, and if the taxpayer establishes that its average base period net income does not reflect the normal operation for the entire base period of a business so commenced or changed in character, the average base period net income shall be considered to be an inadequate standard of normal earnings.

No arbitrary temporal limitations can be provided to circumscribe the concept of “immediately prior to the base period” for the purposes of section 722(b) (4) in the case of a business commenced or changed in character at such time. Nor does the fact that a taxpayer has commenced business or changed the character of its business within one or two years prior to the base period necessarily establish eligibility for relief under section 722(b) (4). Generally, business experiences a time lag between the time that new operations are commenced, re-

flecting either the starting of a new business or of a business essentially different in character from an old business, and the attainment of a normal earning level. If all or a portion of this time lag occurs during the base period, the earnings during such period cannot be said to represent normal average earnings.

Generally, the commencement of business or the change in character of a business will be deemed to have occurred immediately prior to the base period if under normal conditions the normal earning level of a business so commenced or changed would not be realized until some time during the base period and would be principally and directly related to such commencement or change. However, if a taxpayer, which has commenced business immediately prior to the base period, has reached its level of normal operations prior to such period, but has sustained a loss in its first base period year because of the occurrence of an unusual event or circumstance, such as a flood interrupting production, the average base period net income will not be considered to be an inadequate standard of normal earnings because the taxpayer has commenced business immediately prior to the base period. Any relief sought by such a taxpayer should be based upon interruption of production under section 722(b)(1) and section 35.722-3(a).

The following examples are illustrations of the provisions of this subsection: Corporation A, which makes its returns on a calendar year basis, and which until 1934 manufactured snuff at a loss, in that year changed to the manufacture of cigars. Due to normal difficulties in establishing trade connections and in establishing its product, it did not realize normal profits until 1938. Such corporation is deemed to have changed the character of its business immediately prior to the base period. Corporation B, which makes its returns on the calendar year basis, converted its business in 1934 from the manufacture of general textiles to the manufacture of automobile upholstery. It immediately realized a level of earnings which were deemed to be reasonable for such business and enjoyed such earnings until 1938. In that year it made a profitable connection with a large automobile manufacturer, and as a result realized larger profits. The fact of such large profits due to this connection is not principally and directly attributable to the change in the character of the business in 1934, and such fact is not a normal and inevitable result of such change. Consequently the change in the character of the business in 1934 is not considered to have occurred immediately prior to the base period for the purposes of section 722(b)(4).

If the business of a taxpayer which was commenced or changed in character either immediately prior to or during the base period was growing and expanding so that by the end of the base period it did not reach the earning level which it would have attained had the business

been commenced or changed in character two years prior to the time of the actual event, the taxpayer shall be deemed to have commenced business or changed the character of its business at such earlier time. In order to establish that its actual average base period net income is an inadequate standard of normal earnings, the taxpayer shall establish that the actual average base period net income does not reflect the normal operation for the entire base period of a business commenced or changed in character at such earlier date. In determining whether the business of the taxpayer was growing or expanding by the end of the base period, consideration may be given to the taxpayer's actual business experience during and immediately prior to the base period, including its rate of growth, to a comparison of the taxpayer's experience and the experience for a comparable period of other members of an industry of which the taxpayer is a member, to the experience and rate of growth of such members after the commencement or change in character of their business, and to the future prospects of the business of the taxpayer under normal conditions reasonably ascertainable at the end of the base period. Events occurring or existing after December 31, 1939, may not be considered in determining whether the taxpayer was growing by the end of the base period, or if so, to the extent thereof.

An example illustrating the preceding paragraph would be a corporation which was organized in 1938 and started the development of a delivery route to sell food products. In 1938, it had a net loss; in 1939, a moderate profit. Its record of earnings is as follows:

Net income (in thousands of dollars)

1938-----	-5	1939 (third quarter)-----	4
1939 (first quarter)-----	-1	1939 (fourth quarter)-----	7
1939 (second quarter)-----	2		

Its steady growth together with other factors indicates that if it had started business two years earlier its earning level at the end of the base period would have been considerably higher. Such taxpayer shall be deemed to have started business in 1936, and its average base period net income would not be considered an adequate reflection of normal operations for the entire base period of the type of business which would have resulted at the end of the base period if the taxpayer had started business in 1936.

Another example would be a taxpayer which immediately prior to and during the base period was engaged in research and development of an American raw material for the manufacture of a product not theretofore practicable of manufacture in the United States. In early 1938 a process was perfected for such manufacture. In that year, the taxpayer entered into sales contracts, commenced a program of building plant and equipment (ultimately completed in 1941), and

began to supply its customers in September, 1939. It operated with low invested capital and its earnings did not reach by the end of the base period the level which would have been reached if the taxpayer had commenced business two years earlier. In such case the average base period net income will be considered to be an inadequate standard of normal earnings, and the taxpayer will be deemed to have commenced business two years prior to the actual commencement.

For the purposes of section 722(b) (4), normal operations refers to normal operations throughout the entire base period of the business commenced or to which such business was changed immediately prior to or during the base period, and to the normal earnings reconstructed on the basis of such normal operations for such entire period. The taxpayer may have commenced business or changed the character of its business after the beginning of the base period; such commencement or change although considered to have been effected two years prior to the actual event might still occur after the beginning of the base period. Neither fact shall prevent the reconstruction of normal earnings for the entire base period, including the time prior to the date of the actual commencement or change or to the date upon which the commencement or change is considered to have occurred.

If the business of the taxpayer has reached by the end of the base period the earning level it would have reached had it been commenced or changed in character two years prior to such event, normal earnings for the entire base period shall be reconstructed upon the basis of the level of normal operations actually attained during the base period and upon the basis of the character, nature, and size of the business actually developed during the base period. If the business of the taxpayer is considered to have been commenced or changed in character two years prior to such event, normal earnings for the entire base period shall be based upon the level of normal operations, and upon the character, nature, and size of the business which would have been developed by the end of the base period if the business had been commenced or changed at such earlier date.

If a business which was commenced or changed in character either during or immediately prior to the base period did not reach, by the end of the base period, the earning level it would have reached had it been commenced or changed in character two years earlier, the earning level which it would have reached had such events occurred at such an earlier date will be dependent upon reconstructed, as opposed to actual production, costs, demand, sales, and selling prices. It may not be possible to reconstruct demand, sales, and selling prices based upon actual economic conditions existing within the framework of the base period. In certain cases actual demand, sales, and selling prices might not represent reasonable limitations upon the earning level

which the taxpayer would have reached had its business been commenced or changed in character two years prior to the actual occurrence. Moreover the fact that a business is deemed to have been commenced or changed two years earlier implies the existence of conditions not necessarily present in the period for which reconstruction is being made. Consequently, in proper cases, demand, sales, and selling prices may be established upon the basis of certain assumptions not inconsistent with the fact that the taxpayer is considered to have commenced business or changed the character of its business two years prior to the actual commencement or change and not inconsistent with the experience of similar taxpayers which have reached a level of normal earnings, or of an industry of which the taxpayer is a member, which might furnish an indication of economic factors to be encountered by an expanding business.

Although actual economic factors influencing the taxpayer's earnings for the period prior to its attainment of normal operations may not reflect the results of such operations and consequently might not furnish adequate criteria for determining the normal earnings for such period, regard might be had to such factors to the extent that they might be determinants in establishing the taxpayer's earning capacity. Thus, if the taxpayer's business is a continuation of a preexisting business enterprise, regard might be had to the experience and earning capacity of such enterprise in order to ascertain normal earnings to be attributed to the taxpayer. Likewise, if a corporation is reorganized in the base period into two new corporations, the excess profits net income of each of the new corporations for the taxable years in the base period in which each was not in existence may be determined from that part of the business of the original corporation operated by each of the new corporations and that part of the excess profits net income of the original corporation attributable to such part of the business.

If the business of the taxpayer, deemed to have been commenced or changed in character two years prior to such event, has not reached by the end of the base period its level of normal operations and of normal earnings because of the interruption or diminution of production, output, or operation on account of events unusual and peculiar in the experience of the taxpayer (section 722(b)(1)), or because of adverse temporary economic circumstances unusual in the case of the taxpayer or an industry of which it was a member (section 722(b)(2)), or because the taxpayer was a member of an industry in which conditions prevailed which would subject the taxpayer to a variant profits cycle or to sporadic and intermittent periods of high production and profits which are not represented in the base period (section 722(b)(3)), or because of other factors adversely affecting

the business of the taxpayer in the base period (section 722(b)(5)), the principles pursuant to which relief is determined in such cases shall be taken into account in determining the normal operations and normal earnings of the taxpayer. Thus, a taxpayer which was organized and commenced business during the base period might be a member of an industry in which conditions prevailing in such industry subjected its members to a profits cycle materially different from the general business cycle. If the base period represented the trough in such cycle and the average base period net income of the members of the industry represented an inadequate standard of normal earnings, the normal operations and normal earnings of the taxpayer might be determined by reference to one or more other periods in the experience of the industry. Relationships existing between the taxpayer's operations in the base period and the operations of other members of the industry, or of the industry as a whole, might be taken into account. See section 35.722-3(a).

The fact that income for the entire base period is to be reconstructed upon the basis of the level of normal operations actually attained during the base period or upon the basis of the level of normal operations which would have been reached had the business been commenced or changed two years earlier, does not necessarily mean that the highest level of earnings actually or constructively reached during the base period is to be ascribed to the entire base period. The earning level of business usually is fluctuating rather than constant. Normal earnings to be attributed to the taxpayer for the base period must follow such pattern. In determining such normal earnings regard may be had to the earnings cycle during the base period of other taxpayers engaged in similar businesses, of other members of an industry of which the taxpayer was a member, of such industry as a whole, and to relationships existing between the taxpayer's production, costs, sales, and profits during its years of normal operations and similar factors in the case of such other taxpayers or industry.

Events or conditions occurring after December 31, 1939, may not be taken into account in determining the constructive average base period net income of a taxpayer which during the base period has commenced business or changed the character of its business. Consequently, the level of normal operations which would have been reached by a taxpayer which is considered to have commenced business or to have changed the character of its business two years prior to the actual event shall not be determined by attributing to the base period the results of the taxpayer's operations for its first two excess profits tax taxable years beginning after December 31, 1939, or for any period of time after such date.

Since the amount of normal earnings in the case of a taxpayer which is considered to have commenced business or changed the character of its business two years prior to the actual event is based upon a reconstructed business experience which has been lengthened two years, such amount may exceed the actual earnings realized by the taxpayer during its first or second excess profits tax taxable year. Consequently, the reconstructed normal earnings which would be used as the constructive average base period net income after the second excess profits tax taxable year may not constitute a fair and just amount to be used for the purposes of the excess profits tax for the first or second excess profits tax taxable year. Therefore, in determining the constructive average base period net income to be used in computing the excess profits tax or the unused excess profits credit for the first or second excess profits tax taxable year, the fair and just amount representing normal earnings should be based upon the actual earning capacity which, as of the end of its base period, the taxpayer could reasonably have expected to reach under normal conditions during such first or second excess profits tax taxable year. If the excess profits net income for the taxpayer's first or second excess profits tax taxable year reflects an earning capacity greater than that reasonably established for such year, the amount by which such excess profits net income exceeds the excess profits credit based upon constructive average base period net income represents adjusted excess profits net income subject to excess profits tax. If the excess profits net income for such first or second taxable year is less than the excess profits credit based upon the constructive average base period net income, the difference is the unused excess profits credit for such year under section 710(c). See section 35.710-3.

A change in the character of the business for the purposes of section 722(b)(4) must be substantial in that the nature of the operations of the business affected by the change is regarded as being essentially different after the change from the nature of such operations prior to the change. No change which businesses in general are accustomed to make in the course of usual or routine operations shall be considered a change in the character of the business for the purposes of section 722(b)(4). Trade custom and practice may be taken into account in determining whether an essential difference in the character of the business has occurred. A change in the character of the business, to be considered substantial, must be reflected in an increased level of earnings which is directly attributable to such change. If such increased level of earnings is not actually realized in the base period, the taxpayer is not precluded from establishing a change in the character of the business provided it can establish that such increased level would have been attained in the base period

but was hindered or delayed by unusual and peculiar events or economic circumstances. Such proof may not take into account any increase in earnings after December 31, 1939, as indicative of the fact that a change in the character of the business was productive of increased earnings.

A change in the character of the business includes changes resulting from the following activities:

(1) A change in the operation or management of the business. The introduction of new or substantially different processes of manufacturing or of new or substantially different methods of distribution would constitute a change in the operation of a business; the hiring of new key managing personnel or the adoption of materially new basic management policies by the old management resulting in drastic changes from old policies would constitute a change in the operation or management of the business. However, ordinary technological improvements developed in the course of routine business operations or changes in operating or supervisory personnel normally experienced by business in general and having no effect upon basic business policies would not be considered a change in the operation or management of the business.

Examples of a change in operation or management might be the following:

Corporation A was reorganized in 1936, and the new directors and officers initiated drastic changes in management, sales, and production policies which were not reflected in the corporation's earnings until 1939; a change in management would be deemed to have occurred. In 1937, Corporation B engaged in coal mining converted from a system of hand loading, under which it had lost money, to mechanized loading which reduced operating costs and resulted in profits; a change in operations has occurred. Likewise, Corporation C, which prior to 1938 marketed its product from door to door, in such year changed such sales methods to direct sales to retailers and thereafter realized profits; it would be deemed to have effectuated a change in operations. Corporation D experienced a severe reduction in the volume of its business due in part to economic conditions but principally to financial mismanagement. Early in 1939 new management was provided, new financial policies were adopted, and the volume of business and of earnings was greatly increased as a result thereof; Corporation D is deemed to have made a change in the management of its business.

(2) A difference in the products or services furnished. A product or service is different from another product or service if the trade custom or practice treats it as a product or service of a different class. A mere improvement in the product or service does not constitute a difference in the product or service. For example, a corporation in

one year of its base period was engaged in both the radio broadcasting business and the department store business, and on January 1, 1940, was engaged only in the radio broadcasting business, the department store business having been discontinued. The corporation is deemed to have changed the character of its business. The same is true of a radio station which for three years in its base period was operated by a seed and nursery company. Beginning in 1939, the radio station was operated strictly as a commercial venture, the seed and nursery business having been discontinued. Another taxpayer manufactured and sold a variety of products, some under patents it had developed. During the base period it engaged in extensive research, developed new products, perfected and obtained a patent, and employed new marketing methods, enabling it to sell a leading product never before sold in the new markets. A difference in the products furnished is deemed to have resulted.

(3) A difference in the capacity for production or operation. A difference in the capacity for production or operation exists not only where new facilities have been acquired or old facilities enlarged, but also where latent productive or operative equipment is utilized and where newly developed techniques adopted with respect to existing facilities expand the productive or operating capacity of such facilities. Also included are cases where liquid working capital has been increased admitting of an enlarged scope of operations. A radio broadcasting station increased its power during the base period, necessitating changes and expansion of the physical property of the station, and thus enlarged the area it served. The station was thereby enabled to increase its volume of advertising and advertising rates. Such radio station is deemed to have effected a change in its capacity for production or operation. A taxpayer, in addition to its regular business of manufacturing dental equipment, in 1937 entered the field of manufacture of custom-built precision parts and instruments for the aviation industry, using surplus capacity for the purpose. Such activities would be considered to result in a change in the capacity for production and operation and the normal expansion, including expansion of the line of products which it would have experienced in this new field had it entered such field two years earlier, would be considered.

(4) A difference in the ratio of nonborrowed capital to total capital. As used in this paragraph, total capital is the sum of the average equity invested capital and the average borrowed capital for the taxable year. If a taxpayer operated during the base period in whole or in part on borrowed capital, the interest paid or accrued on such capital would be a deduction in computing average base period net income. If during the base period borrowed capital was reduced so that at the end of its base period the interest deduction was reduced, deductions

for interest during the base period would be greater than such deductions during the excess profits tax taxable years. If the total capital at the end of the base period was as large as or larger than the total capital prior to the reduction of the borrowed capital, the average base period net income, to the extent that it was reduced by the interest deduction, would furnish an inadequate standard for determining excess profits. If, however, the total capital at the end of the base period was reduced by the amount by which the borrowed capital was reduced, the average base period net income would not necessarily furnish an inadequate standard for determining excess profits since the total amount of capital producing excess profits net income would also be reduced. For the purposes of section 722(b) (4) a difference in the ratio of non-borrowed capital to total capital does not obtain merely because borrowed capital has been reduced or because equity invested capital has been increased. Such difference arises only when there is a decrease in borrowed capital offset by a corresponding increase in equity capital. In such event the amount of interest, on borrowed capital so retired during the base period, which has been deducted in computing average base period net income shall be disallowed as a deduction in computing constructive average base period net income. For the purposes of the preceding sentence, the amount of borrowed capital retired during the base period shall be limited to the increase in equity invested capital (whether by amounts paid in for stock, as paid-in surplus, or as contributions to capital, or by the amount of accumulated earnings and profits) for such period.

(5) The acquisition before January 1, 1940, of all or part of the assets of a competitor, with the result that the competition of such competitor was eliminated or diminished. The form in which such acquisition was accomplished and whether or not in a transaction in which taxable gain or loss was recognized is immaterial. For example, two competing newspapers were operating at a loss during all or part of the base period. Prior to January 1, 1940, the first newspaper purchased the franchises and other assets of the second newspaper and as a result of this transaction the condition of the surviving paper was much more promising. A difference in the character of the business of the taxpayer has occurred.

Any change in the capacity for production or operation of the business consummated during an excess profits tax taxable year ending after December 31, 1939, as a result of a course of action to which the taxpayer was committed prior to January 1, 1940, or any acquisition before May 31, 1941, from a competitor engaged in the dissemination of information through the public press, of substantially all the assets of such competitor employed in such business with the result that competition between the taxpayer and the competitor existing before Janu-

ary 1, 1940, was eliminated, shall be deemed to be a change on December 31, 1939, in the character of the business.

If the taxpayer establishes that a change in the character of the business deemed to exist on December 31, 1939, actually entered into the operations of the business during the taxable year and that increased earnings would have been realized during the base period (or during some other period of normal earnings, if the base period is not a period of normal earnings) if the business so changed was in full operation during such period, the average base period net income shall be deemed to be an inadequate standard of normal earnings. The taxpayer must also establish by competent evidence that it was committed prior to January 1, 1940, to a course of action leading to such change. Such a commitment may be proved by a contract for the construction, purchase, or other acquisition of facilities resulting in such change, by the expenditure of money in the commencement of the desired change, by the institution of legal action looking toward such change, or by any other change in position unequivocally establishing the intent to make the change and commitment to a course of action leading to such change. The change in the capacity for production or operation referred to in the preceding paragraph means a change such as described in paragraph (d) (3) of this section.

A change in the character of the business deemed to be a change on December 31, 1939, pursuant to the last sentence of section 722(b) (4), may not be reflected at all in the business of the taxpayer for an excess profits tax taxable year if such change had not yet been consummated by such year, may be partially reflected in such year to the extent that the new productive or operating capacity was utilized, or may be reflected in full for such year if the full normal capacity for production or operation so changed entered into the business of the taxpayer for such year. Consequently it is possible that the level of normal earnings based upon full normal operating capacity during the base period might exceed the level of earnings reached during an excess profits tax taxable year based upon but a portion of full operating capacity. No accurate computation of excess profits or of an unused excess profits credit for an excess profits tax taxable year can reasonably be made with respect to a taxpayer which has not reached full normal operating capacity in such year based upon a comparison of normal earnings representing full operating capacity of such change with excess profits net income from operations for such year based upon but a portion of normal operating capacity of such change. With respect to such an excess profits tax taxable year, the only fair and just standard of normal earnings to be included in the constructive average base period net income as attributable to such change must be based upon normal earnings attributable to the level of operations of the

changed capacity for production or operation which normally would have been reached by the taxpayer during such year.

The extent to which the change in the capacity for production or operation entered into the business of the taxpayer for an excess profits tax taxable year shall be deemed to be the extent to which a change in capacity for production or operation existed on December 31, 1939. Therefore the fair and just amount to be included in the constructive average base period net income, as attributable to such change, in computing excess profits for any taxable year of a taxpayer which has consummated a change in capacity for production or operation after December 31, 1939, under section 722(b) (4), and prior to the time that the full normal earning capacity of such change has been reached, shall be determined upon the basis of the extent to which the changed productive or operating capacity is reflected in the taxpayer's business for such year. The extent to which such changed capacity is reflected in the business for a taxable year shall be based upon the length of time during the taxable year in which the changed capacity for production or operation was utilized and the level of normal production or operation which was reached as the result of such changed capacity.

For an excess profits tax taxable year, prior to the attainment of full normal operating capacity, the fair and just amount of normal earnings attributable to a change in capacity for production or operation consummated after December 31, 1939, may be determined either by multiplying the full normal earnings attributable to normal operating capacity for the base period (or a comparable period) by a percentage representing the extent to which such change is reflected in the taxpayer's business for such year, or by determining normal earnings upon the basis of the operating level which normally would have been reached by such change during such year. To the extent necessary to determine the nature of the change in the capacity for production or operation, and the extent to which such change has been reflected in the taxpayer's business, regard may be had to facts existing after December 31, 1939. Although no regard should be had to actual earnings after December 31, 1939, as indicative of the amount of normal earnings attributable to the change, ratios existing between such earnings and earnings from other operations of the taxpayer or of similar taxpayers or an industry of which the taxpayer is a member may be taken into account. The principles applicable to the determination of the fair and just amount representing normal earnings to be included in constructive average base period net income as attributable to a changed capacity for production or operation shall also be applicable to the determination of such amount in the case of a taxpayer which has before May 31, 1941, acquired substantially all the assets of a competitor engaged in the dissemination

of information through the public press, pursuant to the last sentence of section 722(b) (4).

The determination of normal earnings both in the case of a taxpayer consummating a change in capacity for production or operation after December 31, 1939, and in the case of a taxpayer acquiring before May 31, 1941, assets of a competitor engaged in the dissemination of information through the public press, may be made in the same manner as the determination of normal earnings of a taxpayer which is deemed to have commenced business or to have changed the character of its business two years prior to the actual event.

In no event may any portion of a constructive average base period net income which is attributable to a change in the capacity for production or operation, or to the acquisition of assets of a competitor engaged in disseminating information through the public press with a concomitant elimination of competition be allowed in the computation of the excess profits tax for any taxable year in which such increased capacity or acquisition of assets and the effect of the elimination of competition do not enter into the business of the taxpayer, regardless of the fact that facilities giving rise to such increased capacity or representing assets acquired have been completely constructed or have been actually acquired in such year. For any excess profits tax taxable year subsequent to the year in which the changed capacity or the assets of the competitor and the elimination of competition have been reflected in the business of the taxpayer to the extent of full normal earning capacity, the constructive average base period net income shall include the entire amount of normal earnings attributable to such increased capacity or acquired assets and elimination of competition, regardless of the fact that in such later year the changed capacity or the acquisition of assets and the effect of the elimination of competition are not reflected to the extent of full normal earning capacity.

If a change in the capacity for production or operation, or the acquisition of assets of a competitor, occurs after December 31, 1939, amounts of money or property paid in to the taxpayer after the beginning of its first excess profits tax taxable year might be used in effectuating such change or acquisition. The amounts of money or property so paid in would constitute capital additions to be used in the determination of the net capital addition for an excess profits tax taxable year under section 713(g) and section 743, and the excess profits credit based on income is increased by 8 percent of the net capital addition under section 713(a)(1)(B). In such case the amount otherwise determined as the fair and just amount representing normal earnings attributable to a changed capacity or an acquisition of assets and elimination of competition would duplicate that portion

of the excess profits credit based on the net capital addition. Consequently, in computing the constructive average base period net income attributable to the change in the character of the business described in the last sentence of section 722(b)(4), the fair and just amount representing normal earnings determined without regard to the provisions of this paragraph to be used in the computation of the excess profits tax for a taxable year shall be reduced by an amount equal to 8 percent of that portion of net capital addition for such year which has been utilized in constructing or acquiring the facilities giving rise to such change. Such portion of the net capital addition so utilized shall be deemed to be equal to that percentage of the net capital addition for such year as that portion of the aggregate of the daily capital additions considered to have been expended in the construction or acquisition of such facilities is of the aggregate of the daily capital additions. In no event, however, shall the amount of the constructive average base period net income attributable to the change be reduced to less than zero.

The effect of the last sentence of section 722(b)(4) may be illustrated by the following examples:

In 1939, Corporation M, a mining company, began the development of a new mine and the construction of a new plant to be used in connection with such mine. The sum of \$3,000,000 was expended upon this project in 1939 and 1940. Of this amount, \$1,000,000 was paid in for stock of the corporation in 1939 and \$2,000,000 was paid in for stock in 1940. Five hundred thousand dollars additional was paid in for stock in 1940 and used as working capital. Assume that for 1941 and 1942, the net capital addition is \$2,250,000. The mine and plant were completed and entered production on October 1, 1941, thus being in operation for three-twelfths of the year 1941. During 1941, the level of production reached by the new facilities was 25 percent of normal operating capacity. The facilities were in operation during the entire year 1942 and reached a level of production of 75 percent of normal operating capacity. There will be considered to be a change in the character of the business on December 31, 1939, for purposes of the application of section 722 to the year 1941 and to subsequent years. No claim for relief based upon such facts may be made for the year 1940, since the new facilities were not a part of the taxpayer's business operations for such year. If it is assumed that full normal earnings attributable to full normal operating capacity is \$400,000, the fair and just amount to be included in constructive-average base period net income for 1941 attributable to the new facilities is \$25,000 (three-twelfths multiplied by 25 percent of \$400,000, i. e., three-twelfths multiplied by \$100,000). This amount should be reduced by \$144,000 representing an amount equal to 8 percent of that portion of the net capital addition which has

been utilized in the construction of the new facilities (8 percent of $2\frac{1}{2}\%$ of \$2,250,000). Since the reduction of \$144,000 exceeds the amount of \$25,000, there is no constructive average base period net income attributable to the new facilities to be used in computing the excess profits tax for 1941. The fair and just amount to be included in constructive average base period net income for 1942 attributable to the new facilities is \$300,000 (\$400,000 multiplied by 75 percent). This amount should be reduced by \$144,000 computed as provided above. The excess of \$300,000 over \$144,000, i. e., \$156,000, is the amount of constructive average base period net income attributable to the new facilities to be used in computing the excess profits tax for 1942.

Radio broadcasting station R entered into a contract in July 1939, to change its basic network affiliation from a network with a low volume of business and local programs to one of the larger networks with a very large volume of business and Nation-wide programs. This change in the operation of the business enabled the station greatly to increase its revenue, and to serve a larger audience. Although the contract with the new network was signed in July 1939, actual broadcasting of the new network's programs did not start until March 1940. Corporation R, however, is considered to have been committed to a course of action prior to January 1, 1940, which led to a change in capacity for production and operation consummated after December 31, 1939, and thus to have established a change in the character of its business on December 31, 1939.

In April 1941, an evening newspaper acquired substantially all of the assets employed in publishing a competitive morning newspaper, with the result that competition between the taxpayer and the competitor existing prior to January 1, 1940, was eliminated. A change in the character of the business is deemed to have occurred on December 31, 1939, and the taxpayer is eligible for relief under section 722 for the year 1941 and subsequent years.

(e) *Other factors affecting business and resulting in inadequate standard of normal earnings.*—If the taxpayer establishes the presence during or immediately prior to the base period of one or more factors which may reasonably be considered to have influenced adversely operations during the base period and to have resulted in unusually low earnings during the base period, and the application of section 722 to the taxpayer would not be inconsistent with the principles underlying the provisions of section 722(b) and with the conditions and limitations enumerated in such section, the average base period net income shall be deemed to be an inadequate standard of normal earnings.

The purpose of section 722(b) is to make eligible for relief under section 722 a corporation which would normally use the excess profits credit based on income in ascertaining income subject to excess profits tax but which has experienced conditions affecting it or an industry of

which it was a member resulting in an average base period net income which is not an adequate reflection of average normal earnings and which consequently is not an adequate measurement for the determination of excess profits. The excess profits tax is specifically designed to recapture a portion of profits due to the expansion and creation of activities by the war effort. Profits earned during the current excess profits tax return period can therefore furnish no competent guide to what constitutes normal average earnings. The mere fact that the average base period net income of a taxpayer is somewhat, or even considerably, smaller than its anticipated or actual excess profits net income does not necessarily mean that the average base period net income is an inadequate standard of normal earnings. Such average base period net income may reflect the result of normal operations; a larger current income may reflect the effects of the war economy and truly constitute excess profits to be taxed. Since current excess profits net income cannot be taken into account in determining constructive average base period net income, the mere disparity between average base period net income and current income is no basis for a claim for relief under section 722(b) (5).

Eligibility for relief under section 722(b) (5) and the determination of a constructive average base period net income must not be inconsistent with the principles, conditions, and limitations contained in section 722(b) (1), (2), (3), and (4) and section 35.722-3 (a), (b), (c), and (d).

SEC. 35.722-4 DETERMINATION OF EXCESSIVE AND DISCRIMINATORY TAX; TAXPAYER NOT ENTITLED TO EXCESS PROFITS CREDIT BASED ON INCOME.—Section 722(c) defines an excessive and discriminatory excess profits tax, computed without regard to the provisions of section 722, for an excess profits tax taxable year, in the case of a taxpayer which is not entitled to use the excess profits credit based on income pursuant to section 713 (or pursuant to section 742, if the taxpayer has acquired the assets of another corporation). This section applies to taxpayers coming into existence after December 31, 1939, which are not entitled to use the excess profits credit based on average base period net income, and to foreign corporations compelled to use the excess profits credit based on invested capital (see section 712(b)). The excess profits tax of such corporations, computed without regard to section 722, shall be considered to be excessive and discriminatory if the excess profits credit based on invested capital is an inadequate standard for determining excess profits because of one or more of the following reasons:

(a) The business of the taxpayer is of a class in which intangible assets not includible in invested capital under section 718 make important contributions to income. Corporation M commenced busi-

ness in 1940. Its business was of a class which required little invested capital but necessitated the establishment of contacts with the trade in which it would obtain its customers. It lost money during its first two years of operation, but by 1942 had built up patronage and showed a considerable profit. If its invested capital was very small, its excess profits credit based on invested capital would be an inadequate standard for determining excess profits, and the corporation would be entitled to file a claim for relief under section 722 for the year 1942 and subsequent years.

(b) The business of the taxpayer is of a class in which capital is not an important income-producing factor. An illustration might be a corporation commencing business in June, 1940, doing business as fashion consultants. Although the corporation operates with very little invested capital, it cannot qualify as a personal service corporation under section 725 because it employs a large technical and professional staff. The excess profits credit based upon low invested capital would be an inadequate standard for determining excess profits.

(c) The invested capital of the taxpayer is abnormally low. If the type of business done by the taxpayer is not one in which invested capital is small but the invested capital of the taxpayer is unusually low because of peculiar conditions existing in its case, the excess profits credit based on invested capital will be considered an inadequate standard for determining excess profits. Thus, suppose that a corporation commenced business in 1941 with a leased plant valued at \$1,000,000, but with equity invested capital and borrowed capital of only \$40,000. If the invested capital of such company is unusually low relative to the size of its operations, its excess profits credit based on invested capital might be an inadequate standard for determining excess profits, and the taxpayer would be subject to an unreasonable tax burden if required to compute its excess profits tax under the invested capital method.

The last sentence of section 722(a) permits consideration to be given to the nature of the taxpayer and the character of its business under section 722(c) existing after December 31, 1939, to the extent necessary to establish the normal earnings to be used as constructive average base period net income. In the case of a taxpayer commencing business after December 31, 1939, it is necessary to examine the type of business engaged in, the relationship between its profits and invested capital, its profits and sales, and the profits and invested capital and profits and sales of comparable concerns, the earning capacity of the taxpayer, the character and experience of the management, the nature of the competition encountered, and all other factors pertinent in constructing normal earnings. The mere

fact that earnings after December 31, 1939, exceed the amount of the excess profits credit based on invested capital is not of itself an indication that the taxpayer is of a class which shows a higher than average return upon capital or that its invested capital is abnormally low. Therefore any facts or conclusions derived with respect to the period after December 31, 1939, shall be related to the base period; or, if the base period does not represent a period of normal earnings for the type of business exemplified by the taxpayer, to another period of average normal earnings; and in either case the taxpayer must establish that it would satisfy the provisions and conditions of section 722(c) and of this section for such period.

No exact criteria can be prescribed for the computation of the constructive average base period net income of a taxpayer described in this section. In some cases it may be the average of normal earnings reconstructed for the 48 months preceding the beginning of its first excess profits tax taxable year which would have begun in 1940 (but not after May 31, 1940); in others it might be determined without reconstructing the income for each year in a fictitious base period. In still other cases, if the taxpayer is a member of an industry which was depressed during the base period or which has a variant business cycle or sporadic and intermittent periods of prosperity, the constructive average base period net income might be determined by reference to the average earnings of comparable businesses in the same industry computed for a period of normal average earnings or computed as the average earnings over the period of existence of the industry. If the taxpayer's business is a continuation of a preexisting business enterprise, regard might be had to the experience and earning capacity of such enterprise in order to ascertain normal earnings to be attributed to the taxpayer.

As in the case of taxpayers which are deemed to have commenced business or changed the character of the business two years prior to the actual event, and of taxpayers which after December 31, 1939, have consummated a change in the capacity for production or operation as a result of a course of action to which the taxpayer was committed prior to January 1, 1940, it may not be possible to reconstruct demand, sales, and selling prices based upon such demand and sales upon the basis of actual economic conditions existing within the framework of the base period or other period established to be a period of normal earnings. In certain cases actual demand, sales, and selling prices might not represent reasonable limitations upon the earning level which the taxpayer would have attained had it been in existence during such period. Moreover, the fact that normal earnings are being reconstructed for such period for a business which was not then in existence implies the existence of conditions not necessarily present in the period

for which reconstruction is being made. Consequently in proper cases, demand, sales, and selling prices may be established upon the basis of certain assumptions not inconsistent with the hypothesis that the taxpayer was in existence and attained its normal earning level during such period, and not inconsistent with the experience of similar taxpayers which have reached a level of normal earnings, or of an industry of which the taxpayer is a member, which might furnish an indication of economic factors which would have been encountered by the taxpayer in such period.

Since business normally requires a period of development after commencement before attainment of normal earning capacity, the full amount of normal earnings upon which would be based the constructive average base period net income may exceed the excess profits net income for an excess profits tax taxable year. No accurate computation of excess profits or of an unused excess profits credit for an excess profits tax taxable year can reasonably be made with respect to a taxpayer which has not reached full normal earning capacity in such year based upon comparison of normal earnings representing full operating capacity with excess profits net income from operations for such year based upon but a portion of normal operating capacity. With respect to such an excess profits tax taxable year, prior to the year in which the taxpayer has reached its full earning capacity, the only fair and just standard of normal earnings to be used as the constructive average base period net income for such year shall be based upon normal earnings attributable to the level of operations which normally would have been reached by the taxpayer during such year. Such normal earnings may be determined in the same manner as in the case of a change in the capacity for production or operation consummated during a taxable year beginning after December 31, 1939, as a result of a course of action to which the taxpayer was committed prior to January 1, 1940. See section 35.722-3(d).

Amounts paid into a corporation which is organized and commences business after December 31, 1939, after the beginning of its first excess profits tax taxable year constitute capital additions under section 713(g) or section 743. An amount equal to 8 percent of the net capital addition is included in computing the excess profits credit based on income under section 713(a). Since the amount of normal earnings to be used as the constructive average base period net income must be based upon the nature and character of a taxpayer as it exists on a certain date, a portion of such normal earnings may duplicate a portion of the excess profits credit based upon the net capital addition. In order to obviate such duplication, no amount shall be included in the net capital addition which is included in determining the nature of the taxpayer and the character, kind, and size of its

business upon the basis of which is determined the constructive average base period net income. Consequently, in any case in which the taxpayer has claimed relief under the provisions of section 722(c), the beginning of the taxpayer's first excess profits tax taxable year for the purposes of computing that portion of the excess profits credit reflecting net capital additions or reductions under sections 713(g) and 743, shall be considered to be that date after which capital additions and capital reductions are not taken into account in computing constructive average base period net income. For example, assume that a corporation reporting income on the basis of a calendar year commenced business on April 1, 1940, with \$100,000 of property paid in for stock. By November 1, 1940, \$200,000 additional had been paid in, and by the end of its taxable year, December 31, 1940, \$10,000 additional had been paid in. It is assumed that the corporation is entitled to relief under section 722, and it is determined that a constructive average base period net income should be established with respect to the nature and character of the business of the taxpayer which existed on November 1, 1940. For the purposes of an adjustment to the excess profits credit on account of net capital additions or reductions based upon section 713(g), November 1, 1940, rather than April 1, 1940, will be deemed to be the beginning of the taxpayer's first excess profits tax taxable year.

SEC. 35.722-5 APPLICATION FOR RELIEF UNDER SECTION 722.—(a) Requirements for filing.—Except as provided in section 710(a) (5) and section 35.710-5 (relating to deferment of payment of excess profits tax in certain cases under section 722) and except as provided in (e) of this section, the taxpayer is not permitted to claim the benefits of section 722 in computing its excess profits tax on its return, but must compute its tax, file its return, and pay its excess profits tax without the application of section 722. To obtain the benefits of section 722 for any taxable year beginning after December 31, 1941, a taxpayer not later than six months after the date prescribed by law for the filing of its excess profits tax return for such year must file under oath an application on Form 991 (revised January, 1943) for the benefits of section 722, unless the taxpayer has deferred on its return a portion of its excess profits tax under section 710(a) (5), or unless the provisions of (d) and (e) of this section are applicable to the taxpayer. For the purposes of this section, the time prescribed by law for filing the return includes the period of any extension of time granted for such filing.

In order to obtain the benefits of an unused excess profits credit computed by using the excess profits credit based on constructive average base period net income for an excess profits tax taxable year beginning after December 31, 1941, as an unused excess profits credit carry-

over, the taxpayer must file an application on Form 991 (revised January, 1943) not later than six months after the date prescribed by law for the filing of the excess profits tax return for the year to which such unused excess profits credit carry-over is desired to be applied, except as otherwise provided in (e) of this section. In order to obtain the benefits of an unused excess profits credit computed by using the excess profits credits based on constructive average base period net income for any taxable year as an unused excess profits credit carry-back, a timely application for relief must be filed with respect to the taxable year in which such unused excess profits credit arose except as otherwise provided in (e) of this section. In addition a claim for refund or credit on Form 843 claiming the benefit of the carry-back shall be filed within the period of limitation provided in section 322 applicable to the year to which such carry-back is to be applied.

Except as otherwise provided in this section, the application on Form 991 (revised January, 1943) must set forth in detail and under oath each ground under section 722 upon which the claim for relief is based, and facts sufficient to apprise the Commissioner of the exact basis thereof. The mere statement of the provision or provisions of law under section 722 upon which the claim for relief is based shall not constitute an application for relief within the meaning of section 722. If a claim for relief is based upon section 722(b)(5) and section 35.722-3(e) (relating to factors other than those expressly provided by section 722(b)(1), (2), (3), and (4) and section 35.722-3(a), (b), (c), and (d)), the application must state the factors which affect the business of the taxpayer, which may reasonably be considered as resulting in an inadequate standard of normal earnings during the base period, and the reasons why the extension of relief under section 722 to the taxpayer would not be inconsistent with the principles underlying the provisions of sections 722(b)(1), (2), (3), and (4), and section 35.722-3(a), (b), (c), and (d), and with the conditions and limitations enumerated therein. If it is not possible for the taxpayer within six months from the date prescribed by law for filing its excess profits tax return to obtain, prepare, and present all the detailed information required to establish its eligibility for relief and the amount of its constructive average base period net income, such information may be submitted within a reasonable time after filing the application as a supplement to the application. No new grounds presented by the taxpayer after the date prescribed by law for filing its application will be considered in determining eligibility for relief or the amount of the constructive average base period net income to be used in computing such relief for a taxable year.

If an application for relief has been filed for any prior excess profits tax taxable year, whether under section 722 prior to its amendment by the Revenue Act of 1942 or after such amendment, and if a constructive

average base period net income has not been finally determined which may be used by the taxpayer in computing its excess profits tax for the current year, the supporting data and information submitted with such earlier application need not be repeated in Form 991 (revised January, 1943) filed for the current year provided reference is made to such earlier application as constituting part of Form 991 (revised January, 1943) filed for the current year.

In any case in which the taxpayer claims on its excess profits tax return, in accordance with section 710(a)(5) and section 35.710-5, the benefit of a tax deferment under section 710(a)(5), it must attach duplicate copies of its completed application for relief under section 722 on Form 991 (revised January, 1943) to its excess profits tax return on Form 1121. If a taxpayer files an excess profits tax return on which is deducted a tax deferment claimed under section 710(a)(5) without attaching a completed Form 991 (revised January, 1943) thereto, the taxpayer will not be deemed to have claimed on its return in accordance with section 710(a)(5) and section 35.710-5 the benefits of section 722. (See section 35.710-5.). In such case, the amount of tax shown on the return shall be the amount shown by the taxpayer, increased by the amount of tax deferment improperly claimed. In order to obtain the benefits of section 722 with respect to the tax shown on the return, the taxpayer must file an application for relief under section 722 on Form 991 (revised January, 1943) not later than six months after the date prescribed by law for the filing of the return.

(b) *Method of filing and information required.*—The application on Form 991 (revised January, 1943) shall be filed in duplicate with the Commissioner of Internal Revenue, Washington, D. C., attention of the Income Tax Unit, Clearing Division, Claims Control Section, except in those cases in which the taxpayer claims on its excess profits tax return the benefit of a tax deferment pursuant to section 710(a)(5). In such latter event, the application shall be executed in duplicate and attached to the taxpayer's excess profits tax return on Form 1121 for the taxable year for which such deferment is claimed. Such application shall, in accordance with the provisions of this section, and the instructions on Form 991 (revised January, 1943) set forth the following information:

- (1) The name and address of the corporation;
- (2) The date and place of incorporation;
- (3) The excess profits tax taxable year for which the benefits of section 722 are claimed;
- (4) The collection district in which the excess profits tax return for such year was filed;
- (5) The date on which the excess profits tax return for the year was filed and the period of extension, if any, granted for the filing of such return;

(6) The excess profits tax shown upon the excess profits tax return for the year (computed prior to the deferment under section 710(a) (5), to the foreign tax credit under section 729, to the credit for debt retirement under section 783, and to the adjustment under section 734);

(7) The excess profits tax computed after the application of section 722 (computed as prescribed in line 6);

(8) The reduction in tax resulting from the application of section 722;

(9) The adjusted excess profits net income computed without regard to section 722;

(10) The normal tax net income computed without regard to the credit provided in section 26(e) relating to income subject to excess profits tax;

(11) The percentage of which line 9 is of line 10;

(12) The amount of tax deferred under section 710(a) (5);

(13) The total net relief claimed with respect to the excess profits tax shown on the return;

(14) The total excess profits tax for the taxable year paid at or prior to the time the application is filed;

(15) The amount of refund or credit for which the application is a claim;

(16) If the application is filed as a result of a deficiency:

(a) the excess profits tax shown in the preliminary notice or notice of deficiency,

(b) the excess profits tax after application of section 722, and

(c) the reduction in tax under section 722;

(17) The prior taxable year or years for which an application for a constructive average base period net income has been made;

(18) Whether a constructive average base period net income has been finally determined and used in connection with a prior taxable year, and if so:

(a) the amount determined for use in computing excess profits tax for a prior year,

(b) the year for which such amount was used,

(c) the date of determination,

(d) by whom the determination was made,

(e) the reason for a claim for a constructive average base period net income for use in the taxable year if different from the amount used in a prior year,

(f) whether the membership of an affiliated group filing consolidated excess profits tax returns has changed from the year in which a constructive average base period net income was finally determined for such group;

(19) The excess profits net income or deficit in excess profits net income for each taxable year in the base period computed without regard to section 722;

(20) The average base period net income determined without regard to section 722, together with information and computations showing whether there is claimed:

(a) the benefit of section 713(e) (relating to exclusion of deficit or to increase in lowest year in base period), or

(b) the benefit of section 713(f) (relating to increased earnings in last half of base period);

(21) The amount and the computation of the constructive average base period net income claimed for use in computing excess profits tax for the taxable year;

(22) Whether Supplement A has been availed of in determining average base period net income, and whether a separate constructive average base period net income has been finally determined for any component prior to the time the application is made;

(23) If the business was commenced during the base period or after December 31, 1939, whether such business is a continuation in whole or in part of a previously existing business, and if so, a statement of particulars;

(24) If the taxpayer is a member of an affiliated group making a consolidated excess profits tax return, and if such group is making application for relief under section 722:

(a) the first taxable year for which a consolidated excess profits tax return was made,

(b) whether a constructive average base period net income has been finally determined for any member of the group, and

(c) names and addresses of each member of the group, and all pertinent information necessary to determine constructive average base period net income of such group;

(25) If the taxpayer came into existence after December 31, 1939, the date after which capital additions and capital deductions were not taken into account in computing constructive average base period net income;

(26) If the benefits of section 711(a) (1) (I) or 711(a) (2) (K) (relating to nontaxable income of certain industries with depletable resources) are claimed, a schedule showing the computation of, and the fair and just amount of:

(a) normal output during the base period, as defined in section 735(a) (5),

(b) normal unit profit as defined in section 735(a) (9);

(27) If normal production, output, or operation was interrupted during the base period because of unusual and peculiar events (section 722(b)(1)) :

(a) a description of the events and time of occurrence, and

(b) the taxable years in the base period during which production output or operations were affected;

(28) If the business of the taxpayer was depressed during the base period, or the taxpayer was a member of an industry which was depressed during the base period because of temporary and unusual economic events (section 722(b)(2)) :

(a) a description of the temporary economic events unusual in the case of the taxpayer or an industry of which it was a member, and

(b) if claim of depression is based on membership in a depressed industry, description of industry, and names and addresses of other members of such industry;

(29) If the business of the taxpayer was depressed in the base period because of membership in an industry affected by conditions subjecting the taxpayer to either a profits cycle differing materially from the general business cycle (section 722(b)(3)(A)), or sporadic and intermittent periods of profits inadequately represented in the base period (section 722(b)(3)(B)) :

(a) a description of the character of the industry, and names and addresses of other members of the industry,

(b) data establishing that the taxpayer was depressed by reason of an unusual profits cycle, or

(c) data establishing that the taxpayer was depressed by reason of realization of sporadic profits inadequately represented in the base period;

(30) If the business of the taxpayer was commenced, or if there was a change in the character of the business, immediately prior to or during the base period (section 722(b)(4)) :

(a) the date upon which the commencement of business or the change in the character of the business occurred,

(b) if a change in the character of the business has occurred:

(i) the nature of the change,

(ii) the portion of the definition in section 722(b)(4) within which such change is claimed to fall, and

(iii) evidence supporting the contention that the average base period net income does not reflect normal operations for the entire base period,

(c) if the business did not reach by the end of the base period the earning level it would have reached if the business had been commenced, or if the change in the character of the business had

occurred two years prior to the time the commencement or change occurred, a statement of particulars,

(d) if a change in capacity for production or operation of the business was consummated during the taxable year beginning after December 31, 1939, as a result of a course of action to which the taxpayer was committed prior to January 1, 1940:

(i) the date upon which such change was consummated, and the extent to which income for such year reflects such change,

(ii) evidence of commitment to a course of action prior to January 1, 1940,

(iii) a schedule showing net capital addition or net capital reduction (section 713(g) (1) or (2)), and the amount of money or property expended after beginning of the first excess profits tax taxable year under the Internal Revenue Code in changing the capacity for production or operation of the business;

(31) If other factors produce an average base period net income which is an inadequate standard of normal earnings, and if the application of section 722 is not inconsistent with the principles and limitations of section 722(b) (section 722(b) (5)):

(a) a description of other factors claimed to affect business during the base period and to result in an average base period net income which is an inadequate standard of normal earnings;

(32) If the business of the taxpayer is of a class in which intangible assets not includible in invested capital under section 718 make important contributions to income (section 722(c) (1)):

(a) description of character of intangible assets, and

(b) names and addresses of other corporations believed to be in the same class of business where intangible assets of a similar character make important contributions to income;

(33) If the business of the taxpayer is of a class in which capital is not an important income-producing factor (section 722 (c) (2)):

(a) a description of the nature of the business and an explanation of why capital is not an important income-producing factor, and

(b) names and addresses of other corporations believed to be in the same class of business in which capital is not an important income-producing factor;

(34) If the invested capital of the taxpayer is abnormally low (section 722(c) (3)):

(a) a description of the circumstances causing invested capital to be abnormally low;

(35) Such other information as may be required by the instructions appearing on Form 991 (revised January, 1943) or issued therewith.

(c) *Claim for refund.*—The application on Form 991 or Form 991 (revised January, 1943) shall be considered a claim for refund or credit with respect to the excess profits tax for the taxable year for which the application is filed which has been paid at or prior to the time such application is filed. The amount of credit or refund claimed shall be the excess of the amount of excess profits tax for the taxable year paid over the amount of excess profits tax claimed to be payable computed pursuant to the provisions of section 722. In case the taxpayer elects to pay in installments the tax shown upon its return and at the time the application is filed such tax has not been paid in full, the taxpayer should file a claim for refund on Form 843 as promptly as possible after such tax has been paid in full. The information already submitted in the application need not again be submitted on Form 843 if reference is made therein to such application. For limitations upon refunds and credits generally, see section 322. As to procedure upon disallowance of a claim for refund of an excess profits tax which is claimed to be excessive and discriminatory under section 722, see section 732.

(d) *After assertion of deficiency.*—If a taxpayer does not file prior to September 16, 1943, with respect to an excess profits tax taxable year beginning in 1940 or 1941 or within the 6-month period provided in section 722(d) with respect to an excess profits tax taxable year beginning after December 31, 1941, an application under (a) and (b) of this section, it may nevertheless obtain relief under section 722 for such year if there is a deficiency in excess profits tax asserted against it for such year. In such case, the operation of section 722 shall not reduce the excess profits tax for such year determined without reference to such section by an amount in excess of the amount of the deficiency finally determined without reference to such section.

If a preliminary notice of deficiency is issued, the taxpayer may obtain the limited benefits of section 722 described in the preceding paragraph by filing an application on Form 991 (revised January, 1943) within 90 days after the date of such notice, regardless of when or whether a formal notice of deficiency is issued. (See section 272(a).) If a formal notice of deficiency is issued without the issuance of a preliminary notice or within 90 days after the issuance of a preliminary notice, the taxpayer may claim such benefits in its petition, or amended petition, to The Tax Court of the United States filed in accordance with the rules of The Tax Court and with respect to the deficiency asserted in such formal notice. If, however, a preliminary notice is issued and the taxpayer does not file a timely application on Form 991 (revised January, 1943), and a formal notice of deficiency is issued after the expiration of 90 days from the date of the preliminary notice, the taxpayer cannot claim the benefits of section 722 in a peti-

tion, or amended petition, filed with The Tax Court of the United States.

A taxpayer filing an application on Form 991 (revised January, 1943) after a preliminary notice of deficiency shall attach to such application a copy of such notice.

(e) *Waiver of limitations for subsequent taxable years.*—If constructive average base period net income is finally determined under section 722(a) with respect to a taxpayer, or if permission is granted by the Commissioner after a determination which has not become final, and if, in the opinion of the Commissioner, no substantial evidence exists which requires a redetermination of such constructive average base period net income for use in any subsequent taxable year, such taxpayer may without the filing of any application on Form 991 (revised January, 1943) use the constructive average base period net income so determined, except as further adjustments may be required by section 711(b), in computing its excess profits credit based on income and its excess profits tax in any return required to be filed thereafter. If a taxpayer, which pursuant to the preceding sentence would otherwise be entitled to use a constructive average base period net income previously determined, is acquired by another corporation in a transaction which under Supplement A constitutes it a component corporation and the transferee an acquiring corporation, or if such taxpayer becomes a member of an affiliated group which makes a consolidated excess profits tax return, the average base period net income of the acquiring corporation, or the consolidated average base period net income of the affiliated group, as the case may be, may not as of right include such constructive average base period net income. To obtain the benefits of section 722, such acquiring corporation or affiliated group of corporations must file an application on Form 991 (revised January, 1943) and establish eligibility for relief and the fair and just amount representing normal earnings to be used as the constructive average base period net income.

Eligibility for relief and a constructive average base period net income finally determined on behalf of a taxpayer with respect to an excess profits tax taxable year may have to be reestablished with respect to a subsequent taxable year if:

- (1) the taxpayer, after the year with respect to which such determination was made, acquires a component corporation in a transaction constituting it an acquiring corporation under Supplement A,

- (2) the membership of the taxpayer which is an affiliated group of corporations making consolidated excess profits tax returns has changed subsequent to the year with respect to which the determination was made,

(3) the taxpayer which is an affiliated group of corporations makes its first consolidated excess profits tax return subsequent to the year with respect to which such determination was made on behalf of one or more members of the group,

(4) the taxpayer is deemed to have commenced business or changed the character of its business two years prior to the actual event, and as of the close of its base period could not reasonably except to realize its full earning capacity in the year with respect to which the determination was made,

(5) the taxpayer has effected a change in capacity for production or operation after December 31, 1939, as a result of a course of action to which it was committed prior to January 1, 1940, and the full effect of such change was not reflected in the operations of the business in the year with respect to which the determination was made,

(6) the taxpayer commenced business after December 31, 1939, and the business had not reached its full earning capacity in the year with respect to which the determination was made.

SEC. 723. EQUITY INVESTED CAPITAL IN SPECIAL CASES.

[ADDED BY SEC. 201, SECOND REV. ACT 1940; AMENDED BY SEC. 205(f), REV. ACT 1942.]

(a) Where the Commissioner determines that the equity invested capital as of the beginning of the taxpayer's first taxable year under this subchapter cannot be determined in accordance with section 718, the equity invested capital as of the beginning of such year shall be an amount equal to the sum of (a) the money plus (b) the aggregate of the adjusted basis of the assets of the taxpayer held by the taxpayer at such time, such sum being reduced by the indebtedness outstanding at such time. The amount of the money, assets, and indebtedness at such time shall be determined in accordance with rules and regulations prescribed by the Commissioner with the approval of the Secretary. In such case, the equity invested capital for each day after the beginning of the taxpayer's first taxable year under this subchapter shall be determined, in accordance with rules and regulations prescribed by the Commissioner with the approval of the Secretary, using as the basic figure the equity invested capital as so determined.

(b) The equity invested capital of mutual insurance companies other than life, or marine, shall be the mean of the surplus, plus 50 per centum of the mean of all reserves required by law, both surplus and reserves being determined at the beginning and end of the taxable year. The surplus shall include all of the assets of the company other than reserves required by law.

SEC. 35.723-1 RULES WHERE EQUITY INVESTED CAPITAL CANNOT BE DETERMINED UNDER SECTION 718.—In cases in which the Commissioner determines that the equity invested capital of a corporation as of the beginning of its first excess profits tax taxable year can not be determined in accordance with section 718, such equity invested capital

shall be an amount equal to the sum of (a) the money, plus (b) the aggregate of the adjusted basis of the assets other than money, held by the corporation as of the beginning of such taxable year, such sum being reduced by the indebtedness of the corporation outstanding at such time. The adjusted basis of the assets shall be the adjusted basis for determining loss upon a sale or exchange for Federal income tax purposes. See, in general, section 113 and the regulations prescribed thereunder. For the purposes of section 723 the term "indebtedness" means any liability of the corporation, absolute and not contingent, and includes liabilities assumed by the corporation, whether or not in connection with property held by the taxpayer, and any liabilities to which property held by the corporation is subject, but does not include the obligation of the corporation on its capital stock.

The equity invested capital under section 723 for each day after the first day of the first excess profits tax taxable year of the corporation shall be the basic figure determined under the first paragraph of this section increased or decreased as provided in section 718 and the regulations prescribed thereunder with respect to changes in the equity invested capital occurring after the beginning of such first taxable year. For such purpose the term "accumulated earnings and profits" means the earnings and profits accumulated since the beginning of the first excess profits tax taxable year of the corporation, computed without regard to any deficit in accumulated earnings and profits existing at the beginning of such year. Similarly, the term "earnings and profits" refers only to such accumulated earnings and profits and earnings and profits of an excess profits tax taxable year. In all cases coming under section 723 the taxpayer shall be treated as a corporation newly organized immediately prior to the beginning of its first excess profits tax taxable year with an equity invested capital, consisting of money paid in for stock, equal to the basic figure determined under section 723.

In any case in which a taxpayer finds it impossible to determine its equity invested capital as of the beginning of its first excess profits tax taxable year in accordance with section 718, it may compute its equity invested capital in accordance with section 723, provided it submits with its return a schedule showing such computation, and a statement of the facts upon which it bases its conclusion that it can not compute its equity invested capital under section 718, so that the Commissioner may determine whether its equity invested capital can be computed in accordance with that section.

SEC. 35.723-2 EQUITY INVESTED CAPITAL OF MUTUAL INSURANCE COMPANIES OTHER THAN LIFE OR MARINE.—The equity invested capital of mutual insurance companies other than life or marine shall be determined as provided in section 723 (b) rather than section 718. The

equity invested capital of such insurance companies for any such year shall be the mean of the surplus, plus 50 percent of the mean of all reserves required by law, both surplus and reserves being determined at the beginning and end of the taxable year. For this purpose surplus means the excess of all the assets of the company over the sum of the liabilities of the company, including in such liabilities the reserves required by law. In determining such excess, all the assets of the company, whether admitted or not admitted, shall be included. "Reserves required by law" include not only reserves required by express statutory provisions but also reserves required by the rules and regulations of State insurance departments when promulgated in the exercise of an appropriate power conferred by statute, but do not include assets required to be held for the ordinary running expenses of the business, such as taxes, salaries, and unpaid brokerage. Only reserves commonly recognized as such in insurance accounting are to be taken into consideration in computing the "reserves required by law." In the case of a fire insurance company the only reserves commonly recognized are the "unearned-premiums."

SEC. 724. FOREIGN CORPORATIONS AND CORPORATIONS ENTITLED TO BENEFITS OF SECTION 251—INVESTED CAPITAL.

[ADDED BY SEC. 201, SECOND REV. ACT 1940; AMENDED BY SEC. 212(a), REV. ACT 1942.]

Notwithstanding section 715, in the case of a foreign corporation engaged in trade or business within the United States, and in the case of a corporation entitled to the benefits of section 251, the invested capital for any taxable year shall be determined in accordance with rules and regulations prescribed by the Commissioner with the approval of the Secretary, under which—

(a) **GENERAL RULE.**—The daily invested capital for any day of the taxable year shall be the aggregate of the adjusted basis of each United States asset held by the taxpayer on the beginning of such day. In the application of section 720 in reduction of the average invested capital (determined on the basis of such daily invested capital), the terms "admissible assets" and "inadmissible assets" shall include only United States assets; or

(b) **EXCEPTION.**—If the Commissioner determines that the United States assets of the taxpayer cannot satisfactorily be segregated from its other assets, the invested capital for the taxable year shall be an amount which is the same percentage of the aggregate of the adjusted basis of all assets held by the taxpayer as of the end of the last day of the taxable year which the net income for the taxable year from sources within the United States is of the total net income of the taxpayer for such year.

(c) **DEFINITION OF UNITED STATES ASSET.**—As used in this subsection, the term "United States asset" means an asset held by the taxpayer in the United States, determined in accordance with rules and regulations prescribed by the Commissioner with the approval of the Secretary.

SEC. 35.724-1 INVESTED CAPITAL OF CERTAIN FOREIGN CORPORATIONS AND CORPORATIONS ENTITLED TO BENEFITS OF SECTION 251.—In the case of a foreign corporation engaged in trade or business within the United States, and in the case of a corporation entitled to the benefits of section 251 (on account of deriving a large portion of its gross income from possessions of the United States), the invested capital for any taxable year shall be invested capital as provided in sections 715, 716, 717, and 720, with the following exceptions:

(a) The daily invested capital for each day in the taxable year shall be the aggregate of the adjusted basis of each United States asset as defined in (d) below held by the taxpayer on the beginning of such day. The adjusted basis of each such asset shall be the adjusted basis for determining loss upon a sale or exchange for Federal income tax purposes. The amount of United States assets held at the beginning of each day of the taxable year shall be determined in the same manner as the amount of admissible and inadmissible assets is determined under section 35.720-1. The daily invested capital computed under this section is not affected by the indebtedness of the corporation, and does not include borrowed capital as defined in section 719.

(b) In the application of section 720 in reduction of the average invested capital (determined on the basis of the daily invested capital as provided in (a) above), the terms “admissible assets” and “inadmissible assets” shall include only United States assets. The amount of such admissible assets and inadmissible assets shall be determined in the same manner as provided in section 35.720-1.

(c) In cases in which the Commissioner determines that the United States assets of a corporation can not satisfactorily be segregated from its other assets, the invested capital of the corporation for the taxable year shall be an amount which is the same percentage of the aggregate adjusted basis (for determining loss) of all assets held by the taxpayer as of the end of the last day of the taxable year which the net income for the taxable year from sources within the United States is of the total net income of the taxpayer for such year. For the purposes of this paragraph the net income of the corporation from sources within the United States shall be determined as provided in section 119 and the regulations prescribed thereunder. The provisions of sections 715 and 720 relating to adjustment for inadmissible assets have no application in determining invested capital under section 724(b).

(d) For the purposes of section 724 the term “United States asset” means an asset either (1) employed by the taxpayer in the United States in carrying on its trade or business therein, or (2) of a kind the income from which is income from sources within the United States

under section 119 and the regulations prescribed thereunder irrespective of where the evidence of the property right in such asset is held.

SEC. 725. PERSONAL SERVICE CORPORATIONS. [ADDED BY SEC. 201, SECOND REV. ACT 1940; AMENDED BY SEC. 223(b), REV. ACT 1942.]

(a) **DEFINITION.**—As used in this subchapter, the term “personal service corporation” means a corporation whose income is to be ascribed primarily to the activities of shareholders who are regularly engaged in the active conduct of the affairs of the corporation and are the owners at all times during the taxable year of at least 70 per centum in value of each class of stock of the corporation, and in which capital is not a material income-producing factor; but does not include any foreign corporation, nor any corporation 50 per centum or more of whose gross income consists of gains, profits, or income derived from trading as a principal. For the purposes of this subsection, an individual shall be considered as owning, at any time, the stock owned at such time by his spouse or minor child or by any guardian or trustee representing them.

(b) **ELECTION AS TO TAXABILITY.**—If a personal service corporation signifies, in its return under Chapter 1 for any taxable year, its desire not to be subject to the tax imposed under this subchapter for such taxable year, it shall be exempt from such tax for such year, and the provisions of Supplement S of Chapter 1 shall apply to the shareholders in such corporation who were such shareholders on the last day of such taxable year of the corporation. Such corporation shall not be exempt for such year if it is a member of an affiliated group of corporations filing consolidated returns under section 141.

SEC. 35.725-1. TAXATION OF PERSONAL SERVICE CORPORATIONS.—A personal service corporation is subject to the excess profits tax imposed under Subchapter E of Chapter 2 the same as any other domestic corporation unless it elects as to any taxable year not to be subject to such tax. Such an election may not be exercised by a corporation filing a consolidated return under section 141. If a corporation is exempt by reason of the exercise of such an election, the provisions of Supplement S of Chapter 1 (sections 391 to 396, inclusive) shall apply to the shareholders in such corporation who were such shareholders on the last day of the taxable year of the corporation. See section 29.394-1 of Regulations 111. In such case, the amount of the undistributed Supplement S net income shall be considered as paid in to the corporation as of the close of the taxable year as paid-in surplus or as a contribution to capital, and the amount of accumulated earnings and profits as of the close of such year shall be correspondingly reduced. See section 394(d).

SEC. 35.725-2 DEFINITION OF PERSONAL SERVICE CORPORATION.—(a) *In general.*—The term “personal service corporation” means a domestic corporation in which capital is not a material income-producing factor and the income of which is to be ascribed primarily to the activities of shareholders who (1) are regularly engaged in

the active conduct of the affairs of the corporation, and (2) are the owners, throughout the entire taxable year of at least 70 percent in value of each class of stock of the corporation.

If 50 percent or more of the gross income of a corporation consists of gains, profits, or income derived from trading as a principal, such corporation can not be considered to be a personal service corporation. As to corporations in which less than 50 percent of the gross income is derived from trading as a principal, see (c) below.

(b) *Stock interest of shareholders.*—Shareholders regularly engaged in the active conduct of the affairs of the corporation and to whom the income of the corporation is primarily to be ascribed must own at all times during the taxable year at least 70 percent in value of each class of stock of the corporation. If stock is owned by the spouse or minor child of an individual, or owned by the guardian or trustee of such spouse or child, such stock is treated as being owned by such individual.

A corporation can not be considered to be a personal service corporation for any taxable year if another corporation owns more than 30 percent in value of any class of its stock at any time during such year. A corporation is an artificial entity and can not itself be regularly engaged in the active conduct of the affairs of another corporation within the meaning of section 725.

The fact that the ownership of shares in the corporation may change during the course of the taxable year does not take the corporation which is otherwise a personal service corporation out of that class unless at some time during the taxable year the ownership of more than 30 percent in value of the shares of any class of stock passes into the hands of persons not regularly engaged in the active conduct of the affairs of the corporation.

(c) *Income to be ascribed primarily to the activities of shareholders.*—If employees other than shareholders contribute substantially to the services rendered by a corporation, such corporation is not a personal service corporation unless, in every case in which services are so rendered, the value of and the compensation charged for such services are to be attributed primarily to the experience or skill of the shareholders and such fact is evidenced in some definite manner in the normal course of the business or profession. The fact that the shareholders give personal attention or render valuable services to the corporation as a result of which its earnings are greater than those of a corporation engaged in a like or similar business or profession, the shareholders of which are not regularly engaged in the activities of the corporation, does not of itself constitute the corporation a personal service corporation.

Income of a corporation from merchandising or trading as a principal, directly or indirectly, in commodities or in the services of others is not to be ascribed primarily to the activities of its shareholders. Income of a corporation from the conduct of an auction, agency, brokerage, or commission business strictly on the basis of a fee or commission may be so ascribed. If, however, either as a matter of business policy or by contract, the corporation assumes any such risks as those of market fluctuations, bad debts, or failure to accept shipments, or if it guarantees the accounts of the purchaser or is in any way accountable to the seller for the payment of the purchase price, the transaction is one of merchandising or trading, and this is true even though the goods are shipped directly from the producer to the consumer and are never actually in the possession of the corporation. The fact that earnings of the corporation are termed commissions or fees is not controlling. The fact that a commission or fee in a transaction is based on a difference in the prices at which the seller sells and the buyer buys raises a presumption that the transaction is one of merchandising or trading, and it will be so considered in the absence of satisfactory evidence to the contrary.

It may happen that a corporation is engaged in two or more businesses or professions which are more or less related. Thus, an engineering concern may also engage in contracting, which amounts to trading in materials and labor, or a brokerage concern may guarantee some of its accounts, or a photographic concern may sell pictures, frames, art goods, and supplies. In such cases, the corporation is not a personal service corporation unless the activities of the corporation consisting of trading or guaranteeing of accounts or selling are negligible or merely incidental, and unless no appreciable part of the earnings is to be ascribed to such activities. See also (e) below relating to the employment of capital.

(d) *Shareholders regularly engaged in the active conduct of the affairs of the corporation.*—A corporation is not a personal service corporation unless shareholders who own at all times during the taxable year at least 70 percent in value of each class of stock are regularly engaged in the active conduct of the affairs of the corporation. That such shareholders devote some of their time to the affairs of the corporation is not sufficient; they must with regularity devote substantial time and energy to the conduct of its affairs.

(e) *Capital as a material income-producing factor.*—In a personal service corporation capital must not be a material income-producing factor. Whether capital is a material income-producing factor is to be determined by reference to (1) the extent to which capital is required to carry on the business or profession and (2) the extent to which capital is actually used in the production of income though

not required by the primary activities of the corporation. If the use of capital is necessary to the production of the income of the corporation and is more than incidental, capital is a material income-producing factor and the corporation is not a personal service corporation. If a substantial portion of the income is attributable to a use of capital, whether or not connected with the primary activities of the corporation, capital is a material income-producing factor even though such use of capital is not necessary to such primary activities. The term "capital" as used in section 725 and in this section means not only capital actually invested by the shareholders but also capital obtained in other ways. Thus, capital may be borrowed either directly as shown by bonds, debentures, certificates of indebtedness, notes, bills payable, or other paper, or indirectly as shown by accounts payable or other forms of credit, or the business of the corporation may be financed in some other manner by its shareholders. If a substantial amount of capital is used to finance or carry the accounts of clients or customers, it will be inferred that because of competition or for other reasons such use of capital is necessary and more than incidental in order to secure or hold business which would otherwise be lost. If a corporation engaged in an agency, brokerage, or commission business regularly employs a substantial amount of capital to lend to its principals, to buy and carry goods on its own account, or to buy and carry odd lots in order that it may render more satisfactory service to its principals or customers, such corporation is not a personal service corporation. In general, the larger the amount of capital actually used the stronger is the evidence that capital is necessary and more than incidental and is a material income-producing factor.

The term "income" as used in section 725 and in this section means gross income. Capital is a material income-producing factor if its use results in a substantial amount of gross income, irrespective of the amount of net income, if any, such use produces.

(f) *Application of regulations; returns.*—No definite and conclusive tests can be prescribed by which it can be finally determined in advance of an examination of the corporation's income tax return whether it is or is not a personal service corporation. In the preceding subsections are set forth the general principles under which such determination will be made.

If a corporation claiming to be a personal service corporation signifies in its return under Chapter 1 for any taxable year its desire not to be subject to the excess profits tax under Subchapter E of Chapter 2 for such taxable year, it shall attach Form 1121PS, in duplicate, to its income tax return on Form 1120. In Form 1121PS there shall be stated (1) such facts as tend to show whether or not

the corporation is a personal-service corporation, including (i) the nature of its business, (ii) the character, preferences, dividend rates, and other essential features of the various classes of its stock outstanding for any time during the taxable year, (iii) the names and addresses of its several shareholders and their relationship to each other, (iv) the number and classes of shares owned at any time during the taxable year by each shareholder and the portion of the year during which such shares were so owned, (v) the nature of the activities of the several shareholders on behalf of the corporation, and (vi) the extent to which capital in any form is used in the business, and (2) the computation of the undistributed Supplement S net income for the taxable year, the names and addresses of all shareholders of the corporation at the close of the taxable year, the number and classes of shares held by each, and such other information as may be required by the form and the instructions printed on the form or issued therewith.

SEC. 35.725-3. ELECTION AS TO TAXABILITY.—The election as to taxability provided for in section 725(b) and the exemption from tax, where such is allowable, have application only to the excess profits tax on domestic corporations imposed under Subchapter E of Chapter 2. The corporation may make such an election by signifying in its return under Chapter 1 its desire not to be subject to the excess profits tax. A new election is required for each taxable year. An amended return filed after the statutory period for filing the return (or after the last day of any extension period) is not a return within the meaning of section 725(b).

SEC. 726. CORPORATIONS COMPLETING CONTRACTS UNDER MERCHANT MARINE ACT, 1936. [ADDED BY SEC. 201, SECOND REV. ACT 1940.]

(a) If the United States Maritime Commission certifies to the Commissioner that the taxpayer has completed within the taxable year any contracts or subcontracts which are subject to the provisions of section 505(b) of the Merchant Marine Act of 1936, as amended, then the tax imposed by this subchapter for such taxable year shall be, in lieu of a tax computed under section 710, a tax computed under subsection (b) of this section, if, and only if, the tax computed under subsection (b) is less than the tax computed under section 710.

(b) The tax computed under this subsection shall be the excess of—

(1) A tentative tax computed under section 710 with the normal-tax net income increased by the amount of any payments made, or to be made, to the United States Maritime Commission with respect to such contracts or subcontracts; over

(2) The amount of such payments.

SEC. 35.726-1 CORPORATIONS COMPLETING CONTRACTS UNDER MERCHANT MARINE ACT OF 1936.—(a) Section 726 provides for an alterna-

ative tax in the case of a corporation which has been certified by the United States Maritime Commission (hereinafter referred to as the Commission) to the Commissioner as having completed within the taxable year any contracts or subcontracts subject to the provisions of section 505(b) of the Merchant Marine Act of 1936, as amended (hereinafter referred to as section 505(b)). Under section 505(b) a contractor or subcontractor is required to pay to the Commission the amount of profit, if any, in excess of 10 percent of the total contract prices of such contracts or subcontracts.

(b) The alternative tax is in lieu of the excess profits tax computed under section 710 but only if such alternative tax is less than the tax under such section. Such alternative tax is the excess of (1) a tentative tax computed under section 710 with the normal-tax net income increased by the amount of any payments made, or to be made, to the Commission with respect to contracts or subcontracts the completion of which during the taxable year has been certified to the Commissioner by the Commission, over (2) the amount of such payments. The tentative tax under section 726(b) (1), as is the case with respect to the tax computed under section 710, shall be the lesser of—

(1) an amount equal to 90 percent of the adjusted excess profits net income (section 710(a) (1) (A)), or

(2) an amount which when added to the sum of the normal tax and surtax for the taxable year equals 80 percent of the corporation surtax net income computed under section 15(a) but without regard to the credit under section 26(e) for income subject to excess profits tax (section 710(a) (1) (B)).

If the tentative tax is computed under section 710(a) (1) (B) and clause (2) of the immediately preceding sentence, the normal tax and surtax for such purposes shall be the actual normal tax and surtax computed under Chapter 1 and shall be determined by using as the credit under section 26(e), in computing normal tax net income and corporation surtax net income, the amount of which the tax computed under section 726(b) pursuant to the provisions of section 710(a) (1) (A) is 90 percent. The corporation surtax net income for the purposes of section 710(a) (1) (B) and clause (2) above, computed without regard to the credit under section 26(e) for income subject to excess profits tax, shall be increased by the amount of any payments made, or to be made, to the United States Maritime Commission with respect to contracts or subcontracts subject to the provisions of section 505(b). For the computation of tax under section 710(a) (1) (B), see section 35.710-4(c).

If the excess profits tax is computed for a taxable year of less than 12 months, the tentative tax shall be the excess profits tax for such tax-

able year computed under section 711(a)(3) (see section 35.711(a)-4), except that for such purpose the corporation surtax net income used to determine the tax under section 710(a)(1)(B) shall be increased by the amount of any payments made, or to be made, to the United States Maritime Commission with respect to contracts or subcontracts subject to the provisions of section 505(b).

The application of this subsection may be illustrated by the following example:

For the calendar year 1942, Corporation S has a normal tax net income, and corporation surtax net income of \$300,000, an excess profits net income of \$330,000, and an excess profits credit of \$75,000. It has paid to the United States Maritime Commission with respect to contracts completed in 1942 and subject to section 505(b) of the Merchant Marine Act of 1936, as amended, \$40,000. Its excess profits tax is \$210,222.23, computed as follows:

Excess profits tax under section 710

1. Excess profits net income.....	\$330,000.00
2. Less specific exemption.....	\$5,000.00
3. Excess profits credit.....	75,000.00
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4. Item 2 plus item 3.....	80,000.00
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5. Adjusted excess profits net income (item 1 minus item 4).....	250,000.00
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6. 90 percent of item 5.....	225,000.00
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7. Corporation surtax net income computed without regard to credit under section 26(e) relating to income subject to excess profits tax.....	300,000.00
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8. 80 percent of item 7.....	240,000.00
9. Total normal tax and surtax (item 15).....	20,000.00
	<hr/>
10. Item 8 minus item 9.....	220,000.00
	<hr/>
11. Excess profits tax (item 6 or item 10 whichever is lesser).....	220,000.00

Normal tax and surtax

12. Normal tax net income and corporation surtax net income computed without regard to credit under section 26(e).....	\$300,000.00
13. Less credit under section 26(e) (amount of which item 6 is 90 percent, i. e., item 5).....	250,000.00
	<hr/>
14. Normal tax net income and corporation surtax net income.....	50,000.00
	<hr/>
15. Total normal tax and surtax (40 percent of item 14).....	20,000.00

Excess profits tax under section 726(b)

16. Excess profits net income including payment to Maritime Commission.....	\$370,000.00
17. Less specific exemption.....	\$5,000.00
18. Excess profits credit.....	75,000.00
19. Item 17 plus item 18.....	80,000.00
20. Adjusted excess profits net income.....	290,000.00
21. Tentative excess profits tax under section 726(b) (1) and section 710(a) (1) (A) (90 percent of item 20).....	261,000.00
22. Less payments made to Maritime Commission.....	40,000.00
23. Excess profits tax under section 726(b) and section 710(a) (1) (A).....	221,000.00
24. Corporation surtax net income including payment to Maritime Commission.....	340,000.00
25. 80 percent of item 24.....	272,000.00
26. Total normal tax and surtax (item 35).....	21,777.77
27. Tentative excess profits tax under section 726(b) (1) and section 710(a) (1) (B) (item 25 minus item 26).....	250,222.23
28. Less payments made to Maritime Commission.....	40,000.00
29. Excess profits tax under section 726(b) and section 710(a) (1) (B).....	210,222.23
30. Excess profits tax under section 726(b) (item 29 or item 23 whichever is the lesser).....	210,222.23
31. Excess profits tax under section 726 (item 11 or item 30 whichever is the lesser).....	210,222.23

Normal tax and surtax for item 26

32. Normal tax net income and corporation surtax net income (item 12).....	\$300,000.00
33. Less credit under section 26(e) (amount of which \$221,000, item 23, is 90 percent).....	245,555.56
34. Normal tax net income and corporation surtax net income.....	54,444.44
35. Normal tax and surtax (40 percent of item 34).....	21,777.77

(c) For the purposes of section 726, a certificate by the Commission that the vessel or portion thereof covered by the contract or subcontract has been delivered during the taxable year shall be deemed to be the certificate required by such section.

(d) A corporation claiming the benefit of section 726 shall attach to its excess profits tax return (1) a certificate of the Commission showing each contract or subcontract subject to the provisions of section 505(b) which the corporation has completed within the taxable year and (2) a statement showing the amount of payments made, or to be made, to the Commission with respect to such contracts and subcontracts. If the amount of the payments made, or to be made, to the Commission with respect to such contracts or subcontracts has not been ascertained at the time of filing the excess profits tax return, the corporation may estimate the amount of such payments for the purposes of section 726. In such cases, the Commissioner may require a bond from the corporation as a condition precedent to the computation of the tax under that section. If such a bond is required, it shall be on the form prescribed by the Commissioner and in such sum as the Commissioner may prescribe, and it shall be conditioned upon the payment by the corporation of any amount of tax found due upon redetermination of the tax made necessary by the estimated amount under section 726(b) (2) proving incorrect, and upon such further conditions as the Commissioner may require. The bond shall be executed by the corporation as principal and by sureties satisfactory to the Commissioner. (See also section 1126 of the Revenue Act of 1926, as amended, paragraph 63 of the Appendix to Regulations 111.)

(e) If the amount actually paid, or to be paid, to the Commission under section 505(b) differs from the amount used in determining the tax under section 726, the corporation shall immediately notify the Commissioner of the amount actually paid, or to be paid, with respect to the particular contract. The Commissioner will thereupon redetermine the amount of the excess profits tax under section 726, and the amount of tax, if any, found to be due upon such redetermination shall be paid by the corporation upon notice and demand from the collector. The amount of tax, if any, shown upon redetermination to have been overpaid shall be credited or refunded to the taxpayer in accordance with the provisions of section 322.

SEC. 727. EXEMPT CORPORATIONS. [ADDED BY SEC. 201, SECOND REV. ACT 1940; AMENDED BY SECS. 212(b) AND 223 (a) AND (c), REV. ACT 1942.]

The following corporations, except a member of an affiliated group of corporations filing consolidated returns under section 141, shall be exempt from the tax imposed by this subchapter:

(a) Corporations exempt under section 101 from the tax imposed by Chapter 1.

(b) Foreign personal-holding companies, as defined in section 331.

(c) Regulated investment companies as defined in section 361 without the application of section 361(b) (4).

(e)¹ Personal-holding companies, as defined in section 501.

¹ No subsection (d).

(f) Foreign corporations not engaged in trade or business within the United States.

(g) Domestic corporations satisfying the following conditions:

(1) If 95 per centum or more of the gross income of such domestic corporation for the three-year period immediately preceding the close of the taxable year (or for such part of such period during which the corporation was in existence) was derived from sources other than sources within the United States; and

(2) If 50 per centum or more of its gross income for such period or such-part thereof was derived from the active conduct of a trade or business.

(h) Any corporation subject to the provisions of Title IV of the Civil Aeronautics Act of 1938, in the gross income of which for any taxable year beginning after December 31, 1939, there is includible compensation received from the United States for the transportation of mail by aircraft if, after excluding from its gross income such compensation, its adjusted excess profits net income for such year is zero or less.

SEC. 35.727-1 EXEMPT CORPORATIONS.—(a) A corporation which has established its right under section 101 to exemption from income tax need not again establish its right under section 727(a) to exemption from excess profits tax. A corporation which has not established its right to exemption under section 101 and which claims exemption under section 727(a) is required to establish its right to exemption under section 101 in the manner prescribed in the regulations thereunder in order to be held exempt under section 727(a).

(b) A corporation which claims exemption under the provisions of section 727, other than the provisions of section 727 (a), (g), and (h), shall file with its income tax return a statement showing under what paragraph of section 727 it claims exemption.

(c) A corporation which claims exemption under section 727(g) shall attach to its income tax return a statement showing for the 3-year period immediately preceding the close of the taxable year (or for such part thereof during which the corporation was in existence) (1) its total gross income from all sources, (2) the amount thereof derived from the active conduct of a trade or business, (3) a description of such trade or business and the facts upon which the corporation relies to establish that such trade or business was actively conducted by it, and (4) the amount of its gross income from sources within the United States. The gross income from sources within the United States shall be determined as provided in section 119 and the regulations prescribed thereunder.

(d) A corporation which claims exemption under section 727(h) shall attach to its income tax return a statement showing (1) that it is subject to the provisions of Title IV of the Civil Aeronautics Act of 1938, (2) the amount of the compensation included in the gross income of the corporation as compensation received from the United

States for the transportation of mail by aircraft, and (3) the amount of its gross income, net income, excess profits net income, and adjusted excess profits net income, after excluding from its gross income the amount of such compensation.

(e) If any corporation described in subsection (a), (b), (c), (e), (f), (g), or (h) of section 727 is a member of an affiliated group of corporations filing consolidated returns under section 141, such corporation shall not be exempt under section 727 for such year.

As to the statute of limitations where no return is filed, see sections 275(a) and 276(a).

SEC. 728. MEANING OF TERMS USED. [ADDED BY SEC. 201, SECOND REV. ACT 1940.]

The terms used in this subchapter shall have the same meaning as when used in Chapter 1.

SEC. 729. LAWS APPLICABLE. [ADDED BY SEC. 201, SECOND REV. ACT 1940; AMENDED BY SEC. 16, EXCESS PROFITS TAX AMENDMENTS 1941, AND BY SECS. 205(g), 224(a), AND 225(b), REV. ACT 1942.]

(a) **GENERAL RULE.**—All provisions of law (including penalties) applicable in respect of the taxes imposed by Chapter 1, shall, insofar as not inconsistent with this subchapter, be applicable in respect of the tax imposed by this subchapter.

(b) **RETURNS.**—

(1) [Not applicable to taxable years under these regulations (section 224(a), Rev. Act 1942).]

(2) **NO RETURN REQUIRED.**—Notwithstanding subsection (a), no return under section 52(a) shall be required to be filed by any taxpayer under this subchapter for any taxable year for which its excess profits net income, computed with the adjustments provided in section 711(a)(2) and placed on an annual basis as provided in section 711(a)(3), is not greater than \$5,000 or, in the case of a mutual insurance company (other than life or marine) which is an inter-insurer or reciprocal underwriter, is not greater than \$50,000.

(3) **CONSOLIDATED RETURNS.**—For provisions relating to consolidated returns, see section 141.

(c) **FOREIGN TAXES PAID.**—In the application of section 131 for the purposes of this subchapter the tax paid or accrued to any country shall be deemed to be the amount of such tax reduced by the amount of the credit allowed with respect to such tax against the tax imposed by Chapter 1.

(d) **LIMITATIONS ON AMOUNT OF FOREIGN TAX CREDIT.**—The amount of the credit taken under this section shall be subject to each of the following limitations:

(1) The amount of the credit in respect of the tax paid or accrued to any country shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's excess profits net income from sources within said country bears to its entire excess profits net income for the same taxable year; and

(2) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken, which the

taxpayer's excess profits net income from sources without the United States bears to its entire excess profits net income for the same taxable year.

SEC. 35.729-1 TIME AND PLACE FOR FILING RETURNS AND INFORMATION TO BE INCLUDED.—Excess profits tax returns shall be filed at the same time and place as the time and place prescribed in sections 53 and 235 and the income tax regulations under such sections for the filing of income tax returns. The excess profits tax return of a corporation of income received or accrued

(a) from the date of its incorporation to the end of its first accounting period, where the period between the date of incorporation and the end of such period is less than 12 months, or

(b) from the beginning of its last accounting period to the date it ceases operations and is dissolved, retaining no assets, where the period between the beginning of the accounting period and such date is less than 12 months,

shall be considered as a return for a fractional part of a year consisting of such period, and shall be filed within the time prescribed for filing returns for taxable years of less than 12 months.

The excess profits tax return shall be on Form 1121 (revised), and such return shall contain all the information required by such form and by these regulations with respect to computation of such tax. The return, however, requires the computation of the tax with only the credit which results in the lesser tax, and a return so filed meets the requirements of the statute. Thus a taxpayer may omit from the return the computation and information with respect to the excess profits credit under section 713 or section 714 which does not result in the lesser excess profits tax and may omit the computation and information with respect to the excess profits net income otherwise to be computed with such omitted credit. A return filed in this manner shall be audited as filed, regardless of whether it may be determined that the use of the omitted credit would result in a lesser tax. A corporation which files a return is not, by reason of the fact that only one method of computing its credit is employed, precluded from using the other method in the computation of its excess profits tax for such taxable year and, if an overpayment results, from filing a claim for the refund of such overpayment within the applicable period of limitation.

For provisions relating to consolidated returns, see section 141 and the regulations prescribed thereunder.

SEC. 35.729-2 TIME FOR PAYMENT OF TAX.—The excess profits tax shall be paid at the same time as the time prescribed in sections 56

and 236 and the income tax regulations under such sections for the payment of income tax.

SEC. 35.729-3 FOREIGN TAX CREDIT.—The provisions of law made applicable to the excess profits tax by section 729(a) include section 131 relating to the credit for income, war-profits and excess-profits taxes paid or accrued during the taxable year to any foreign country or any possession of the United States. The taxpayer is allowed such a credit against the excess profits tax if it claims such credit in its Federal income tax return and likewise claims such credit in its excess profits tax return. The amount of such credit allowable against the excess profits tax is (a) the amount of such income, war-profits and excess-profits taxes reduced by (b) the amount of such taxes allowed as a credit under section 131 against the income tax. Thus, for instance, if a taxpayer pays to a foreign country with respect to the calendar year 1942 income tax in the amount of \$25,000 upon income from sources therein and, due to the operation of the limitation provisions, contained in section 131(b), only the amount of \$20,000 is allowed as a credit against the income tax for that year, the remainder, or \$5,000, is available as a credit against the excess profits tax for the year 1942. The amount thus made available as a credit against the excess profits tax is, however, subject to the further limitations provided in section 729(d). For the application of the limitations provided in section 729(d) to the amount of income, war-profits or excess-profits taxes thus made available as a credit against the excess profits tax, see section 131(b) and the regulations prescribed thereunder.

SEC. 730. CONSOLIDATED RETURNS. [ADDED BY SEC. 201, SECOND REV. ACT 1940; AMENDED BY SEC. 7, EXCESS PROFITS TAX AMENDMENTS 1941, AND BY SEC. 225(a), REV. ACT 1942; NOT APPLICABLE TO TAXABLE YEARS UNDER THESE REGULATIONS (SEC. 225(a), REV. ACT 1942).]

SEC. 731. CORPORATIONS ENGAGED IN MINING OF STRATEGIC MINERALS. [ADDED BY SEC. 201, SECOND REV. ACT 1940; AMENDED BY SEC. 204, REV. ACT 1941, AND BY SEC. 226, REV. ACT 1942.]

In the case of any domestic corporation engaged in the mining of antimony, chromite, manganese, nickel, platinum, quicksilver, sheet mica, tantalum, tin, tungsten, or vanadium, the portion of the adjusted excess profits net income attributable to such mining in the United States shall be exempt from the tax imposed by this subchapter. The tax on the remaining portion of such adjusted excess profits net income shall be an amount which bears the same ratio to the tax computed without regard to this section as such remaining portion bears to the entire adjusted excess profits net income.

SEC. 35.731-1 CORPORATIONS WHICH MINE STRATEGIC MINERALS.—
(a) In case a domestic corporation is engaged in mining tungsten, quicksilver, manganese, platinum, antimony, chromite, tin, nickel,

sheet mica, tantalum, or vanadium (all of which minerals are hereinafter referred to as strategic minerals), within the United States, the portion of its adjusted excess profits net income attributable to such mining is exempt from excess profits tax. The excess profits tax on the remaining portion of such adjusted excess profits net income is an amount which bears the same ratio to the excess profits tax computed without regard to section 731 as such remaining portion bears to the entire adjusted excess profits net income. The excess profits tax shall be the lesser of

(1) an amount equal to 90 percent of the adjusted excess profits net income (section 710(a)(1)(A)), or

(2) an amount which when added to the sum of the normal tax and surtax for the taxable year equals 80 percent of the corporation surtax net income computed under section 15(a) but without regard to the credit under section 26(e) for income subject to excess profits tax (section 710(a)(1)(B)). If the excess profits tax computed without regard to section 731 is determined under section 710(a)(1)(B) and clause (2) of this paragraph, the normal tax and surtax for such purposes shall be determined by using as the credit under section 26(e) in computing normal tax net income and corporation surtax net income the amount of which the tax computed pursuant to section 710(a)(1)(A) and under section 731 upon the adjusted excess profits net income other than from mining strategic minerals is 90 percent.

(b) The portion of the adjusted excess profits net income attributable to mining of strategic minerals is an amount which bears the same ratio to the total adjusted excess profits net income as the portion of the excess profits net income attributable to such mining bears to the total excess profits net income. For any taxable year, the portion of the excess profits net income attributable to such mining is the gross income derived from strategic minerals and arising out of operations which give rise to "gross income from the property," as defined in section 29.23(m)-1(f) of Regulations 111, less the sum of (1) allowable deductions which are directly attributable to such mining for such year, (2) any adjustments made under the provisions of section 711 applicable to such year involving items directly attributable to such mining, and (3) an allocable portion of any deductions partly attributable to such mining and of any adjustments under the provisions of section 711 applicable to such year involving items partly attributable to such mining.

(c) There shall be attached to and made a part of the return of any taxpayer claiming the benefits under section 731 a schedule containing the following information:

(1) The amount of gross income from the mining of strategic minerals and from each other activity of the corporation;

(2) The allowable deductions and the adjustments under section 711 directly attributable to such mining; and

(3) The portion of the allowable deductions and of the adjustments under section 711 allocated to such mining and the basis for such allocation.

The following example illustrates the computation of the tax in the case of a corporation entitled to the benefits of section 731:

Example. The M Corporation, a domestic corporation which makes its return on a calendar year basis, mines both gold and platinum (a by-product of gold) and reduces the ores containing such metals. For 1942, the corporation has an excess profits credit of \$40,000. Also for 1942 the excess profits net income of the M Corporation attributable to platinum mining is \$40,000; that attributable to other activities is \$180,000. The normal tax net income and corporation surtax net income computed without regard to the credit under section 26(e) for income subject to excess profits tax is \$200,000. The excess profits tax is \$112,314.05, computed as follows:

1. Total excess profits net income.....	\$220, 000. 00
2. Less specific exemption.....	\$5, 000. 00
3. Excess profits credit.....	40, 000. 00
4. Item 2 plus item 3.....	45, 000. 00
5. Adjusted excess profits net income.....	175, 000. 00
6. Less portion attributable to platinum mining ($\frac{40,000}{220,000}$ of \$175,000)	31, 818. 18
7. Remaining portion of adjusted excess profits net income.....	143, 181. 82
8. Excess profits tax on adjusted excess profits net income computed without regard to section 731 (90 percent of item 5) ..	157, 500. 00
9. Excess profits tax pursuant to section 710(a)(1)(A) under section 731 on item 7, i. e., portion of item 8 which bears the same ratio to \$157,500 (item 8) as portion of adjusted excess profits net income not attributable to platinum mining (item 7) bears to total adjusted excess profits net income (item 5) ($\frac{143,181.82}{175,000}$ of \$157,500) (viz, 90 percent of item 7) ..	128, 863. 64
10. Corporation surtax net income computed without credit under section 26(e) for income subject to excess profits tax.....	200, 000. 00
11. 80 percent of item 10.....	160, 000. 00
12. Total normal tax and surtax (item 19).....	22, 727. 27
13. Item 11 minus item 12.....	137, 272. 73

14. Excess profits tax pursuant to section 710(a)(1)(B) under section 731 on item 7, i. e., portion of item 13 which bears the same ratio to \$137,272.73 (item 13) as portion of adjusted excess profits net income not attributable to platinum mining (item 7) bears to total adjusted excess profits net income (item 5) $\left(\frac{143,181.82}{175,000} \text{ of } \$137,272.73\right)$ ----- \$112, 314. 05
-
15. Excess profits tax under section 731 on portion of adjusted excess profits net income not attributable to platinum mining (item 7) (item 9 or item 14, whichever is the lesser) ----- 112, 314. 05

Normal tax and surtax

16. Normal tax net income and corporation surtax income computed without regard to credit under section 26(e) for income subject to excess profits tax ----- \$200, 000. 00
17. Less credit under section 26(e) for income subject to excess profits tax (an amount of which the excess profits tax under section 731 computed without regard to section 710(a)(1)(B) is 90 percent, i. e., an amount of which \$128,863.64 (item 9) is 90 percent (viz, item 7) ----- 143, 181. 82
-
18. Normal tax net income and corporation surtax net income ----- 56, 818. 18
19. Total normal tax and surtax (40 percent of item 18) ----- 22, 727. 27

SEC. 732. REVIEW OF ABNORMALITIES BY BOARD OF TAX APPEALS. [ADDED BY SEC. 9, EXCESS PROFITS TAX AMENDMENTS 1941; AMENDED BY SEC. 222(c), REV. ACT 1942.]

(a) **PETITION TO THE BOARD.**—If a claim for refund of tax under this subchapter for any taxable year is disallowed in whole or in part by the Commissioner, and the disallowance relates to the application of section 711(b)(1)(H), (I), (J), or (K), section 721, or section 722, relating to abnormalities, the Commissioner shall send notice of such disallowance to the taxpayer by registered mail. Within ninety days after such notice is mailed (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) the taxpayer may file a petition with the Board of Tax Appeals, for a redetermination of the tax under this subchapter. If such petition is so filed, such notice of disallowance shall be deemed to be a notice of deficiency for all purposes relating to the assessment and collection of taxes or the refund or credit of overpayments.

(b) **DEFICIENCY FOUND BY BOARD IN CASE OF CLAIM.**—If the Board finds that there is no overpayment of tax in respect of any taxable year in respect of which the Commissioner has disallowed, in whole or in part, a claim for refund described in subsection (a) and the Board further finds that there is a deficiency for such year, the Board shall have jurisdiction to determine the amount of such deficiency and such amount shall, when the decision of the Board becomes final, be assessed and shall be paid upon notice and demand from the collector.

(c) **FINALITY OF DETERMINATION.**—If in the determination of the tax liability under this subchapter the determination of any question is necessary solely by reason of section 711(b)(1)(H), (I), (J), or (K),

section 721, or section 722, the determination of such question shall not be reviewed or redetermined by any court or agency except the Board.

(d) **REVIEW BY SPECIAL DIVISION OF BOARD.**—The determinations and redeterminations by any division of the Board involving any question arising under section 721(a)(2)(C) or section 722 shall be reviewed by a special division of the Board which shall be constituted by the Chairman and consist of not less than three members of the Board. The decisions of such special division shall not be reviewable by the Board, and shall be deemed decisions of the Board.

SEC. 504. CHANGE OF NAME OF BOARD OF TAX APPEALS.
(REVENUE ACT OF 1942, TITLE V.)

* * * * *

(c) **REFERENCES.**—All references in any statute (except this section), or in any rule, regulation, or order, to the "Board of Tax Appeals" or to the "Board" when used in the sense of "Board of Tax Appeals", or to the "member", "members", or "chairman" thereof shall be considered to be made to The Tax Court of the United States, the judge, judges, and presiding judge thereof, respectively.

SEC. 35.732-1 REVIEW OF ABNORMALITIES BY THE TAX COURT OF THE UNITED STATES.—Section 732 provides that, in addition to its jurisdiction to redetermine a deficiency, The Tax Court of the United States shall have jurisdiction to review the Commissioner's disallowance of a claim for refund of excess profits taxes, if such disallowance involves the determination of any question relating solely to the application of section 711(b)(1) (H), (I), (J), or (K), relating to abnormal deductions during the base period, section 721, relating to abnormalities in income in the taxable period, or section 722, relating to general relief from excessive and discriminatory excess profits taxes. The taxpayer's petition must be filed with The Tax Court within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) after the sending by registered mail of the notice of disallowance of the claim for refund.

Where the taxpayer has filed such a petition the notice of disallowance of its claim for refund is considered to be a notice of deficiency for all purposes relating to the assessment and collection of taxes or the refund or credit of overpayments. If The Tax Court finds that there has been no overpayment of tax with respect to the taxable year involved, and further finds that there is a deficiency for such year, The Tax Court will determine the amount of such deficiency and such amount shall, when the decision of The Tax Court becomes final, be assessed and paid upon notice and demand from the collector.

The extent and the finality of The Tax Court's jurisdiction with respect to questions involving the sections dealing with abnormalities and general excess profits tax relief are set forth in section 732 (c) and (d). If the ascertainment of the excess profits tax liability for a taxable year is dependent in whole or in part upon the determination of any question which is necessary solely by reason of section

711(b) (1) (H), (I), (J), or (K), section 721, or section 722, the determination of such question shall not be reviewed or redetermined by any court or agency except The Tax Court. If the determinations and redeterminations by any division of The Tax Court involve any question arising under section 721(a) (2) (C) or section 722, such determinations and redeterminations shall be reviewed by a special division of The Tax Court which shall be constituted by the presiding judge and shall consist of not less than three judges of The Tax Court. The decisions of such special division shall not be reviewable by The Tax Court, or by any court or agency, and shall be deemed decisions of The Tax Court. The application of section 732 (c) and (d) may be shown by the following example:

Example. A taxpayer, which is a domestic manufacturing corporation, has filed a claim for refund for a taxable year beginning in 1942, and as a result of the Commissioner's action with respect to such claim, makes the following contentions: first, that it is entitled to a constructive average base period net income of \$1,300,000 pursuant to an application filed on Form 991 for relief under section 722 instead of a constructive average base period net income of \$900,000 determined by the Commissioner; second, that \$100,000 of income from a judgment based upon a claim for patent infringement is net abnormal income attributable under section 721 to prior years whereas the Commissioner has attributed only \$60,000 to such years; and third, that the amount of gross income determined by the Commissioner is too large. Since the taxpayer's first contention is predicated upon an issue arising under section 722, the Commissioner's determination is reviewable only by The Tax Court, and any determination or redetermination made by any division of The Tax Court must be reviewed by the special division constituted by the presiding judge; the decision of such special division is the decision of The Tax Court and cannot be reviewed by The Tax Court or any court or agency. The taxpayer's second contention is based upon an issue arising under section 721; therefore the Commissioner's determination is reviewable only by The Tax Court. Since the issue arises under section 721(a) (2) (A), and not section 721(a) (2) (C), no further review is required by the special division, and the decision of The Tax Court is final and cannot be reviewed by any court or agency. The taxpayer's third contention does not arise under either section 711(b) (1) (H), (I), (J), or (K), section 721, or section 722, but independently of such sections. Consequently review of this issue is not confined to The Tax Court.

SEC. 733. CAPITALIZATION OF ADVERTISING, ETC., EXPENDITURES. [ADDED BY SEC. 10, EXCESS PROFITS TAX AMENDMENTS 1941.]

(a) **ELECTION TO CHARGE TO CAPITAL ACCOUNT.**—For the purpose of computing the excess profits credit, a taxpayer may elect, within six

months after the date prescribed by law for filing its return for its first taxable year under this subchapter, to charge to capital account so much of the deductions for taxable years in its applicable base period on account of expenditures for advertising or the promotion of good will, as, under rules and regulations prescribed by the Commissioner with the approval of the Secretary, may be regarded as capital investments. Such election must be the same for all such taxable years, and must be for the total amount of such expenditures which may be so regarded as capital investments. In computing the excess profits credit, no amount on account of such expenditures shall be charged to capital account:

(1) For taxable years in the base period unless the election authorized in subsection (a) is exercised, or

(2) For any taxable year prior to the beginning of the base period.

(b) **EFFECT OF ELECTION.**—If the taxpayer exercises the election authorized under subsection (a)—

(1) The net income for each taxable year in the base period shall be considered to be the net income computed with such deductions disallowed, and such deductions shall not be considered as having diminished earnings and profits. This paragraph shall be retroactively applied as if it were a part of the law applicable to each taxable year in the base period; and

(2) The treatment of such expenditures as deductions for a taxable year in the base period shall, for the purposes of section 734(b) (2), be considered treatment which was not correct under the law applicable to such year.

SEC. 35.733-1 SCOPE OF ELECTION TO CHARGE TO CAPITAL ACCOUNT EXPENDITURES FOR ADVERTISING OR THE PROMOTION OF GOOD WILL.—Any taxpayer may, for the purpose of computing its excess profits credit under either the income or the invested capital method, elect to charge to capital account any deductions based upon expenditures for taxable years in its base period on account of advertising or the promotion of good will, to the extent that such expenditures may be regarded as capital investments under the regulations prescribed under section 733. Section 733 provides for an election with reference only to deductions for such expenditures for taxable years in the base period. In order to secure the benefits of that section an election must be made by the taxpayer within six months after the date prescribed by law for filing its return for its first excess profits tax taxable year under Subchapter E of Chapter 2.

The election under section 733 is an election to capitalize all the expenditures in each taxable year in the taxpayer's base period which were for advertising or the promotion of good will and which may be regarded as capital investments under the regulations prescribed under section 733. A taxpayer may not capitalize such expenditures for one base period taxable year and treat as a deduction such expenditures with respect to another base period taxable year. No such expenditures for any taxable year beginning prior to the taxpayer's base period may be charged to capital account. A tax-

payer which has failed to make an election under section 733 is not permitted, in computing its excess profits credit, to charge to capital account base period expenditures for advertising or the promotion of good will which have been deducted for taxable years in such period.

SEC. 35.733-2. EXPENDITURES WHICH MAY BE REGARDED AS CAPITAL INVESTMENTS.—An expenditure for advertising or the promotion of good will may be regarded as a capital investment if, upon consideration of all the facts and circumstances of the particular case, it may be regarded as made for the purpose of increasing the taxpayer's earning capacity over a substantial period subsequent to the taxable year in which such expenditure was made. The fact that a corporation failed, because of operating losses, to receive any benefits with respect to its income tax liability from deductions on account of expenditures is not evidence that such expenditures may be regarded as capital investments. In addition to those expenditures for capital items including good will which, under the provisions of section 24, may not be allowed as deductions, the following expenditures may in any case be regarded as capital investments within the contemplation of section 733:

(a) All advertising expenditures to promote a taxpayer's business in a territory new to such taxpayer, or to promote a new product, department, trade mark, trade brand, or trade name of such taxpayer, for the first 12 months after the taxpayer has begun to develop such new territory, or to promote such new product, department, trade mark, trade brand, or trade name. A new product within the meaning of this section does not include any product which is merely an improvement of an earlier product.

(b) All advertising expenditures for the taxable year to the extent that such expenditures exceed the taxpayer's average annual expenditures on account of advertising for the 48 months preceding the taxable year, or, if the taxpayer was not in existence during the whole of such 48-month period, then for the period during which the taxpayer was in existence.

Every item classifiable under this section as a capital investment constitutes a permanent asset of the taxpayer's business, and no deduction for depreciation will be allowed in respect of such an item.

A taxpayer which has made the election under section 733 may not deduct for any excess profits tax taxable year expenditures made in such year similar to expenditures made during its base period for advertising or the promotion of good will which are treated under section 733 for the purposes of its excess profits credit as capital investments. Such a taxpayer has the burden of proving that expenditures for advertising or the promotion of good will which it

seeks to deduct for such excess profits tax taxable year may not be regarded as capital investments under the provisions of this section. The taxpayer shall submit with its excess profits tax return a statement containing complete information with respect to all expenditures for advertising or the promotion of good will made during its excess profits tax taxable year, classified as to those which are deductible and those which may be regarded as capital investments under section 733. The statement filed with the return shall also set forth whether such expenditures were extraordinary in nature or amount and the purpose for which they were made.

SEC. 35.733-3 EFFECT OF ELECTION.—Section 733 retroactively amends, for the purpose of determining the income tax liability and the excess profits credit of any taxpayer exercising an election under that section, the revenue laws applicable to each of such taxpayer's base period taxable years. Hence, the previous treatment as deductions of expenditures made during the base period for advertising or the promotion of good will which may be regarded as capital investments under the regulations prescribed under section 733 is an erroneous and inconsistent treatment. The normal-tax or special-class net income for each applicable base period taxable year must be recomputed with such expenditures disallowed as deductions, and both the excess profits net income for each such year and the earnings and profits account will be increased in the amount of such disallowed deductions.

The disallowance of deductions in the base period made necessary by this section requires a redetermination of the income tax liability for such years and any deficiencies in tax resulting from the disallowance of such deductions shall be assessed and collected under the internal revenue laws applicable with respect to the assessment and collection of deficiencies for such years. If, however, correction of the effect of the prior inconsistent treatment of such items in the base period years is prevented, within the meaning of section 734 (b)(1)(C), correction shall be made by means of an adjustment under section 734. Since the amount of such an adjustment under section 734 is a part of the excess profits tax, which applies only to taxable years beginning after December 31, 1939, it does not decrease earnings and profits or excess profits net income for any period before the beginning of the taxpayer's first excess profits tax taxable year.

In the case of a taxpayer electing under section 733, the provisions of section 711(b)(1)(J), relating to abnormal deductions in the base period, do not affect deductions for expenditures for advertising or the promotion of good will which may be regarded as capital investments, since, in such a case, section 733 effects a disallowance of such

deductions for income tax purposes before any of the adjustments under section 711(b)(1) are operative.

SEC. 734. ADJUSTMENT IN CASE OF POSITION INCONSISTENT WITH PRIOR INCOME TAX LIABILITY. [ADDED BY SEC. 11, EXCESS PROFITS TAX AMENDMENTS 1941; AMENDED BY SEC. 227, REV. ACT 1942.]

(a) **DEFINITIONS.**—For the purposes of this section—

(1) **TAXPAYER.**—The term “taxpayer” means any person subject to a tax under the applicable revenue Act.

(2) **INCOME TAX.**—The term “income tax” means an income tax imposed by Chapter 1 or Chapter 2A of this title; Title I and Title IA of the Revenue Acts of 1933, 1936, and 1934; Title I of the Revenue Acts of 1932 and 1928; Title II of the Revenue Acts of 1926 and 1924; Title II of the Revenue Acts of 1921 and 1918; Title I of the Revenue Act of 1917; Title I of the Revenue Act of 1916; or section II of the Act of October 3, 1913; a war profits or excess profits tax imposed by Title III of the Revenue Acts of 1921 and 1918; or Title II of the Revenue Act of 1917; or an income, war profits, or excess profits tax imposed by any of the foregoing provisions, as amended or supplemented.

(3) **PRIOR TAXABLE YEAR.**—A taxable year beginning after December 31, 1939, shall not be considered a prior taxable year.

(4) The term “predecessor of the taxpayer” means—

(A) A person which is a component corporation of the taxpayer within the meaning of section 740; and

(B) A person which on April 1, 1941, or at any time thereafter, controlled the taxpayer. The term “controlled” as herein used shall have the same meaning as “control” under section 112(h), and

(C) Any person in an unbroken series ending with the taxpayer if subparagraph (A) or (B) would apply to the relationship between the parties.

(b) **CIRCUMSTANCES OF ADJUSTMENT.**—

(1) If—

(A) in determining at any time the tax of a taxpayer under this subchapter an item affecting the determination of the excess profits credit is treated in a manner inconsistent with the treatment accorded such item in the determination of the income-tax liability of such taxpayer or a predecessor for a prior taxable year or years, and

(B) the treatment of such item in the prior taxable year or years consistently with the determination under this subchapter would effect an increase or decrease in the amount of the income taxes previously determined for such taxable year or years, and

(C) on the date of such determination of the tax under this subchapter correction of the effect of the inconsistent treatment in any one or more of the prior taxable years is prevented (except for the provisions of section 3801) by the operation of any law or rule of law (other than section 3761, relating to compromises),

then the correction shall be made by an adjustment under this section. If in a subsequent determination of the tax under this subchapter for such taxable year such inconsistent treatment is not adopted, then the correction shall not be made in connection with such subsequent determination.

(2) Such adjustment shall be made only if there is adopted in the determination a position maintained by the Commissioner (in case the net effect of the adjustment would be a decrease in the income taxes previously determined for such year or years) or by the taxpayer with respect to whom the determination is made (in case the net effect of the adjustment would be an increase in the income taxes previously determined for such year or years) which position is inconsistent with the treatment accorded such item in the prior taxable year or years which was not correct under the law applicable to such year.

(3) **BURDEN OF PROOF.**—In any proceeding before the Board or any court the burden of proof in establishing that an inconsistent position has been taken (A) shall be upon the Commissioner, in case the net effect of the adjustment would be an increase in the income taxes previously determined for the prior taxable year or years, or (B) shall be upon the taxpayer, in case the net effect of the adjustment would be a decrease in the income taxes previously determined for the prior taxable year or years.

(c) **METHOD AND EFFECT OF ADJUSTMENT.**—(1) The adjustment authorized by subsection (b), in the amount ascertained as provided in subsection (d), if a net increase shall be added to, and if a net decrease shall be subtracted from, the tax otherwise computed under this subchapter for the taxable year with respect to which such inconsistent position is adopted.

(2) If more than one adjustment under this section is made because more than one inconsistent position is adopted with respect to one taxable year under this subchapter, the separate adjustments, each an amount ascertained as provided in subsection (d), shall be aggregated, and the aggregate net increase or decrease shall be added to or subtracted from the tax otherwise computed under this subchapter for the taxable year with respect to which such inconsistent positions are adopted.

(3) If all the adjustments under this section, made on account of the adoption of an inconsistent position or positions with respect to one taxable year under this subchapter, result in an aggregate net increase, the tax imposed by this subchapter shall in no case be less than the amount of such aggregate net increase.

(4) If all the adjustments under this section, made on account of the adoption of an inconsistent position or positions with respect to a taxable year under this subchapter (hereinafter in this paragraph called the current taxable year), result in an aggregate net decrease, and the amount of such decrease exceeds the tax imposed by this subchapter (without regard to the provisions of this section) for the current taxable year, such excess shall be subtracted from the tax imposed by this subchapter for each succeeding taxable year, but the amount of the excess to be so subtracted shall be reduced by the reduction in tax for intervening taxable years which has resulted from the subtraction of such excess from the tax imposed for each such year.

(d) **ASCERTAINMENT OF AMOUNT OF ADJUSTMENT.**—In computing the amount of an adjustment under this section there shall first be ascertained the amount of the income taxes previously determined for each of the prior taxable years for which correction is prevented. The amount of each such tax previously determined for each such taxable year shall be (1) the tax shown by the taxpayer, or by the predecessor, upon the return for such prior taxable year, increased by the amounts previously assessed (or collected without assessment) as deficiencies, and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or (2) if no amount was shown as the tax by such taxpayer or such predecessor upon the return, or if no return was made by such taxpayer or such predecessor, then the amounts previously assessed (or collected without assessment) as deficiencies, but such amounts previously assessed, or collected without assessment, shall be decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax. There shall then be ascertained the increase or decrease in each such tax previously determined for each such year which results solely from the treatment of the item consistently with the treatment accorded such item in the determination of the tax liability under this subchapter. To the increase or decrease so ascertained for each such tax for each such year there shall be added interest thereon computed as if the increase or decrease constituted a deficiency or an overpayment, as the case may be, for such prior taxable year. Such interest shall be computed to the fifteenth day of the third month following the close of the excess profits tax taxable year with respect to which the determination is made. There shall be ascertained the difference between the aggregate of such increases, plus the interest attributable to each, and the aggregate of such decreases, plus the interest attributable to each, and the net increase or decrease so ascertained shall be the amount of the adjustment under this section with respect to the inconsistent treatment of such item.

(e) **INTEREST IN CASE OF NET INCREASE OR DECREASE.**—

(1) If an adjustment under this section results in a net decrease, or more than one adjustment results in an aggregate net decrease, the portion of such net decrease or aggregate net decrease, as the case may be, subtracted from the tax which represents interest shall be included in gross income of the taxable year in which falls the date prescribed for the payment of the tax under this subchapter.

(2) If an adjustment under this section results in a net increase, or more than one adjustment results in an aggregate net increase, the portion of such net increase or aggregate net increase, as the case may be, which represents interest shall be allowed as a deduction in computing net income for the taxable year in which falls the date prescribed for the payment of the tax under this subchapter.

SEC. 35.734-1 PURPOSE AND SCOPE OF SECTION 734.—(a) *General.*—

Section 734 provides for an adjustment if a determination of a taxpayer's excess profits tax liability treats an item or transaction affecting the excess profits credit inconsistently with the treatment of such

item or transaction in the determination of the income tax liability of the taxpayer, or a predecessor, for a prior taxable year or years. The adjustment is not authorized unless (1) the treatment of the item or transaction for prior taxable years was incorrect under the law applicable to such years, (2) a correction of the effect of such erroneous treatment for one or more of the prior taxable years is prevented by the operation of a provision or rule of law, and (3) the inconsistent position adopted in the determination is asserted and maintained by the party (either the Commissioner or the taxpayer) who would be adversely affected by the adjustment.

(b) *Definitions*.—When used in sections 35.734-1 to 35.734-4, inclusive—

(1) The terms “taxpayer,” “income tax,” and “prior taxable year” shall have the meaning assigned to such terms by section 734(a). As to what constitutes a taxable year, see section 48(a).

(2) The term “predecessor of the taxpayer” shall have the meaning assigned to such term by section 734(a) (4). It is specifically provided that the term “controlled” as used in such definition shall have the same meaning as “control” under the definition contained in section 112(h). Accordingly, a person is a predecessor of the taxpayer if, on April 1, 1941, or at any time thereafter, such person owned stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the taxpayer. For the purpose of section 734 it is immaterial that such control did not exist during the taxable year in respect of which the incorrect treatment of the item or transaction occurred, or during the taxable year in respect of which the inconsistent position is adopted in the determination of the excess profits credit of the taxpayer.

Any person which is a component corporation of the taxpayer under the definition contained in section 740 is a predecessor of the taxpayer within the meaning of section 734. Such person may be a corporation, partnership, or a sole proprietor. Any such component corporation is a predecessor of the taxpayer irrespective of the method employed in computing the excess profits credit of the taxpayer.

Under the terms of the definition, any person which is a predecessor of a predecessor in an unbroken series ending with the taxpayer is a predecessor of the taxpayer within the meaning of section 734.

The limitation of the term “predecessor of the taxpayer” to certain cases, and the resulting exclusion of other cases, should not be construed to affect the established judicial doctrines commonly

known as estoppel, recoupment, set-off, etc., which may be applied by the courts in appropriate cases.

SEC. 35.734-2 CIRCUMSTANCES OF ADJUSTMENT.—(a) *Determination.*—A final determination of the excess profits tax liability is not a prerequisite to an adjustment under section 734. Whenever there is a determination of the excess profits tax liability and the conditions prescribed in section 734(b) are satisfied, the adjustment is authorized as an essential part of the determination of such tax liability. For example, the making of the excess profits tax return required by section 729 or section 141 is a determination by the taxpayer; the assertion of a deficiency or the allowance or disallowance of a claim for refund is a determination by the Commissioner; and a decision by The Tax Court of the United States or a court is a determination by such Tax Court or court. If any such determination becomes final, the adjustment also becomes final. If, following a determination, there are further proceedings in the case and a subsequent determination which does not adopt the inconsistent treatment of the item or transaction, then no adjustment is authorized as a part of such subsequent determination.

(b) *Correction under ordinary procedure prevented.*—An adjustment is authorized only if, on the date of the determination of the excess profits tax liability, correction of the effect of the inconsistent treatment for one or more of the prior taxable years is prevented (except for the provisions of section 3801, relating to mitigation of effect of limitations and other provisions in income tax cases) by the operation, whether before, on, or after the date of enactment of section 734, of any provision of law (other than section 3761, relating to compromises) or rule of law. Such provisions or rules of law include, for example, statutes of limitations and res judicata.

The ascertainment of whether correction of the effect of the inconsistent treatment is prevented within the meaning of section 734(b) (1) (C) and this section must be made with respect to each income tax for each prior taxable year affected by the erroneous treatment of the item or transaction. Section 734 is not applicable in respect of any income tax for any prior taxable year if, on the date of the determination of the excess profits tax liability, correction of the effect of the erroneous treatment of the item is possible under the ordinary procedure applicable to the assessment and collection of deficiencies or the refund or credit of overpayments, as the case may be, in respect of such tax for such taxable year. See the example under section 35.734-4.

If correction of the effect of the erroneous treatment of the item or transaction with respect to an income tax for a prior taxable year is otherwise prevented, the application of section 734 is not precluded by

the fact that the tax for such year may, under appropriate circumstances, be open to an adjustment under section 3801.

If any income tax liability for a prior taxable year has been compromised under section 3761, no adjustment may be made under section 734 with respect to the tax liability compromised.

(c) *Operation dependent upon maintenance of inconsistent position.*—An adjustment, with respect to an item or transaction, which would result in a net increase in the amount of the income taxes previously determined for prior taxable years is authorized only if (1) the taxpayer with respect to which the determination is made has, in connection with an item or transaction affecting the determination of its excess profits credit, maintained a position which is inconsistent with the erroneous treatment of such item or transaction for prior taxable years, and (2) such inconsistent position is adopted in the determination.

An adjustment, with respect to an item or transaction, which would result in a net decrease in the amount of the income taxes previously determined for prior taxable years is authorized only if (1) the Commissioner, in connection with an item or transaction affecting the determination of the taxpayer's excess profits credit, has maintained a position which is inconsistent with the erroneous treatment of such item or transaction for prior taxable years, and (2) such inconsistent position is adopted in the determination.

Neither the Commissioner nor the taxpayer is required to adopt an inconsistent position with respect to the treatment of an item or transaction in the determination of the excess profits credit because of the fact that such item or transaction was incorrectly treated in the determination of the income tax liability of the taxpayer, or a predecessor, for a prior taxable year or years, under the law applicable to such year or years. Such item or transaction may, in the determination of the excess profits credit, be treated in a manner consistent with the incorrect treatment accorded in the determination of the income tax liability if neither the Commissioner nor the taxpayer objects. Either the Commissioner or the taxpayer, however, may insist upon the correct treatment of such item or transaction in the determination of the excess profits credit under the law applicable to the excess profits tax taxable year, but such action constitutes the maintenance of an inconsistent position and will result in an adjustment under section 734, if the party insisting upon such treatment is the party who would be adversely affected by such adjustment.

A taxpayer which has taken an inconsistent position with respect to an item or transaction affecting the determination of its excess profits credit may, upon notice to the Commissioner in writing, withdraw from such position.

Inconsistent treatment within the meaning of section 734 may relate to the principle or rule of law applied in determining the taxable status of an item or transaction, or it may relate only to the amount of the item or transaction which is to be taken into account for tax purposes. The inconsistency is to be ascertained by reference to the actual treatment of the item or transaction for prior taxable years rather than to what the taxpayer or the Commissioner may have urged.

If a determination of the excess profits tax liability for one taxable year adopts with respect to an item or transaction an inconsistent position which results in an adjustment under section 734, similar treatment of the same item or transaction for subsequent excess profits tax taxable years does not authorize a further adjustment under such section.

(d) *Law applicable in determination of error.*—Whether there was an erroneous treatment of the item or transaction for prior taxable years is to be determined under the provisions of the internal revenue laws applicable with respect to such years. If the inconsistent treatment adopted in the determination of the excess profits tax liability is based upon an authoritative judicial interpretation of the applicable revenue law which differs from the interpretation of such law accepted in the determination of the tax liability for such prior years, then the treatment accorded the item or transaction for such prior years is erroneous within the meaning of section 734.

Section 734 does not authorize an adjustment if the difference between the treatment accorded an item or transaction in computing the excess profits credit and the treatment accorded such item or transaction in computing the tax liability for prior taxable years is occasioned solely by reason of an adjustment required by a specific provision of the Act, such as the adjustments required by section 711(b) to normal-tax net income and special-class net income in computing excess profits net income. Since the disallowances under section 733 of deductions on account of expenditures for advertising or the promotion of good will are not required by the Act but are merely permissive at the election of the taxpayer, and since section 733 specifically provides that, if an election is made, the treatment of such expenditures as deductions for prior taxable years shall be considered incorrect, an adjustment under section 734 may be authorized in the case of such a disallowance.

The rule relative to the burden of proof to establish, in any Tax Court or court proceeding, that an inconsistent position has been taken, is prescribed in section 734(b)(3). If the net effect of the adjustment by reason of the alleged inconsistency would be an increase in the income taxes previously determined for the prior taxable year or years, the burden of proof is upon the Commissioner. If the net

effect of such adjustment would be a decrease in the income taxes previously determined for the prior taxable year or years, the burden of proof is upon the taxpayer. Inasmuch as the adjustment under section 734 is a factor in the determination of the excess profits tax liability, the provisions relative to the burden of proof in a Tax Court or court proceeding do not relieve the taxpayer from responsibility for a full disclosure of the facts necessary to the correct determination of the tax liability.

SEC. 35.734-3 METHOD AND EFFECT OF ADJUSTMENT.—The adjustment authorized by section 734, although measured by reference to the income taxes previously determined for prior taxable years, does not operate as an adjustment to the income tax liability for such years, but the amount of such adjustment is added to or subtracted from, as the case may be, the excess profits tax otherwise computed for the taxable year with respect to which the inconsistent position is adopted.

No adjustment with respect to an item or transaction is authorized unless the inconsistent position adopted in the determination is maintained by the party who would be adversely affected by such adjustment. See section 35.734-2(c). Accordingly, if a determination for one taxable year adopts inconsistent positions with respect to several items or transactions, it is necessary to make separate and distinct computations with respect to each such item or transaction in order to ascertain the amount of the potential adjustment with respect to each such item or transaction and whether an adjustment with respect to such item or transaction is authorized. If several adjustments are authorized with respect to one excess profits tax taxable year, the separate adjustments are aggregated and the aggregate net increase or net decrease is added to, or subtracted from, as the case may be, the excess profits tax otherwise computed for such taxable year. In ascertaining the amount of the adjustment with respect to a particular item or transaction, no effect shall be given to the computations made for the purpose of determining the amount of the adjustment with respect to any other item or transaction. If the several authorized adjustments result in an aggregate net increase, the excess profits tax liability for such taxable year shall not in any case be less than the amount of such aggregate net increase.

If the authorized adjustments with respect to one excess profits tax taxable year result in an aggregate net decrease and the amount of such decrease exceeds the excess profits tax (computed without regard to the provisions of section 734) for such year, the excess may be carried over and subtracted from the excess profits tax in each succeeding taxable year until such excess is exhausted. If excesses result from adjustments with respect to two or more excess profits tax tax-

able years, such excesses shall be carried over in the order of their occurrence.

Example.

	1942	1943	1944	1945	1946	1947
Tax (computed without regard to provisions of section 734)	\$10,000	\$20,000	\$15,000	\$7,000	\$3,000	\$8,000
Aggregate net decrease under section 734	(40,000)	-----	(20,000)	-----	-----	-----
Excess	(30,000)	-----	(5,000)	-----	-----	-----

(a) The \$30,000 excess from 1942 will be subtracted from the tax of \$20,000 for 1943; the remaining \$10,000 will not be subtracted from any 1944 tax since such tax has been absorbed by the \$20,000 net decrease for that year; such remaining \$10,000 will, however, be subtracted from the \$7,000 tax for 1945, and the \$3,000 tax for 1946.

(b) The full \$5,000 excess from 1944 will be subtracted from the tax of \$8,000 for 1947, since the excess from 1942 has been exhausted in 1946 and the tax for 1946 has been reduced to zero.

The amount of the credit for foreign taxes allowable under the provisions of section 729 shall be determined before giving effect to any adjustment under this section.

SEC. 35.734-4 ASCERTAINMENT OF AMOUNT OF ADJUSTMENT.—To ascertain the amount of the adjustment, it is necessary to determine the amount of the increase or decrease in each income tax previously determined for each of the prior taxable years which would have resulted if the item or transaction erroneously treated had received the correct treatment under the law applicable with respect to such tax for such year. To each such increase or decrease there shall be added interest thereon computed as if the increase or decrease constituted a deficiency or an overpayment, as the case may be, with respect to such tax for such year. In all such cases interest shall be computed to the 15th day of the third month following the close of the excess profits tax taxable year with respect to which the determination of the excess profits tax liability is made.

If only one income tax for one prior taxable year is involved, the increase or decrease in such tax for such year plus the interest thereon is the amount of the adjustment with respect to the particular item or transaction.

If two or more income taxes for one prior taxable year, or two or more prior taxable years are involved, it is necessary to determine the increase or decrease in each income tax previously determined for each such year, plus the interest on each such increase or decrease. The difference between the sum of the increases, including the interest thereon, and the sum of the decreases, including the interest thereon,

shall be ascertained and the net increase or net decrease so determined is the amount of the adjustment with respect to the particular item or transaction.

The computation to determine the increase or decrease in each income tax for each year shall be made as follows:

(a) The amount of the tax previously determined must first be ascertained. This may be the amount of tax shown on the taxpayer's return, but if any changes in that amount have been made they must be taken into account, including any adjustment previously made under the provisions of section 820 of the Revenue Act of 1938 or section 3801 of the Internal Revenue Code. In such cases, the tax previously determined will be the tax shown on the return, increased by the amounts previously assessed (or collected without assessment) as deficiencies, and decreased by amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax. If no amount was shown as the tax on the return, or if no return was made, the tax previously determined will be the sum of the amounts previously assessed (or collected without assessment) as deficiencies, decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax.

(b) After the tax previously determined has been ascertained, a recomputation must be made to ascertain the increase or decrease in tax represented by the difference, if any, between the tax previously determined and the tax as recomputed upon the basis of the correct treatment of the item or transaction.

With the exception of the items upon which the tax previously determined was based and the item or transaction with respect to which the erroneous treatment occurred, no item shall be considered in computing the amount of the increase or decrease in the tax previously determined. If the treatment of any item upon which the tax previously determined was based, or if the application of any provisions of the internal revenue laws with respect to such tax depends upon the amount of income (e. g., charitable contributions, foreign tax credit, earned income credit), readjustment of such items in conformity with the change in the amount of the income which results from the correct treatment of the item or transaction in respect of which the inconsistent position was adopted is necessary as part of the recomputation.

Example. In December, 1934, the X Corporation in pursuance of a plan of reorganization transferred all of its assets except cash to the Y Corporation in exchange for all of the stock of the Y Corporation, such stock having a fair market value of \$300,000. The assets transferred, consisting of real estate and securities, had an adjusted basis in the hands of the X Corporation of \$400,000. Among such assets was a building, which was acquired by the X Corporation in 1924, and

which had an adjusted basis in the hands of the X Corporation of \$100,000 and an estimated remaining life of 20 years. The building had a fair market value of \$80,000 at the time of the transfer. Both corporations make their returns on the calendar year basis. The exchange was treated as taxable and the loss of \$100,000 realized by the X Corporation was recognized. For each of the years 1935 to 1941, inclusive, the Y Corporation was allowed a deduction for depreciation in the amount of \$4,000 computed on the cost basis of \$80,000. In its excess profits tax return for the calendar year 1942, the Y Corporation claimed that the assets acquired from the X Corporation should have a basis of \$400,000 for invested capital purposes, including a basis of \$100,000 for the building, and claimed a deduction of \$5,000 for depreciation on the building for such year. This position was based upon the contention that the 1934 exchange was a nontaxable reorganization, resulting from the acquisition by Y Corporation in exchange solely for its voting stock of substantially all of the properties of X Corporation; and that the basis in the hands of the Y Corporation of the assets acquired upon the exchange was the same as the adjusted basis in the hands of the transferor. Timely claims for refund based upon the allowance of additional deductions for depreciation for the taxable years 1939, 1940, and 1941 were filed. The statute of limitations prevents any refund of overpayments or assessment of deficiencies for the taxable years 1934 to 1938, inclusive. The Commissioner's determination of the excess profits tax liability for the calendar year 1942 adopts the inconsistent position asserted by the Y Corporation and, accordingly, if the computation under section 734(d) discloses a net increase in the taxes previously determined for the taxable years for which correction is prevented, an adjustment is authorized under the provisions of section 734.

The X Corporation was not subject to the income tax imposed by Title IA of the Revenue Act of 1934. Its tax previously determined for the taxable year 1934 is \$4,125, computed upon an income of \$30,000. The corporation omitted from its gross income an item of rental income amounting to \$3,000 and neglected to take a deduction for interest amounting to \$1,500. During the taxable year it realized a gain of \$10,000 from the sale of a capital asset.

The increase in the tax of the X Corporation previously determined for 1934, plus the interest thereon, is computed as follows:

Tax previously determined for 1934-----	\$4,125
Net income for 1934 upon which tax previously determined was based-----	30,000
Plus: Capital loss previously allowed (limited to capital gain plus \$2,000)-	12,000
Net income-----	42,000

Tax as recomputed.....	\$5, 775
Tax previously determined.....	4, 125
Increase in tax previously determined.....	1, 650
Interest on increase in tax.....	792
Total increase for 1934.....	2, 442

In accordance with the provisions of section 734(d), the recomputation does not take into consideration the item of \$3,000, representing rental income which was omitted from gross income, or the item of \$1,500, representing interest paid, for which no deduction was allowed.

The Y Corporation was not subject to the income tax imposed by Title IA of the Revenue Acts of 1934, 1936, or 1938. The decrease in the tax of the Y Corporation previously determined for each of the taxable years 1935, 1936, 1937, and 1938, which results solely from the allowance of an additional deduction of \$1,000 for depreciation in each of such years, plus the interest on each such decrease, is assumed to be as follows:

Year	Tax	Interest	Total
1935.....	\$137. 50	\$57. 75	\$195. 25
1936.....	220. 00	79. 20	299. 20
1937.....	220. 00	66. 00	286. 00
1938.....	190. 00	45. 60	235. 60

The amount of the adjustment to be added to the excess profits tax of the Y Corporation otherwise determined for the taxable year 1942 is as follows:

Increase for 1934.....	\$2, 442. 00
Less: Decrease for 1935.....	\$195. 25
Decrease for 1936.....	299. 20
Decrease for 1937.....	286. 00
Decrease for 1938.....	235. 60
	1, 016.05
Net increase (amount of adjustment authorized).....	1, 425. 95

SEC. 35.734-5 INTEREST.—The portion of an adjustment under section 734 which represents interest is characterized as interest for certain tax purposes and is includible in gross income, or allowable as a deduction in computing net income, as the case may be, for the taxable year in which falls the date prescribed for the payment of the excess profits tax for the taxable year to which the adjustment or, in the case of an adjustment involving a carry-over, the portion of such adjustment is applied, regardless of the method of accounting employed by the taxpayer. The date prescribed for payment of the tax is, in the case of a domestic corporation, the 15th day of the third month following the

close of the taxable year and, in the case of a foreign corporation not having an office or place of business in the United States, the 15th day of the sixth month following the close of the taxable year.

Under the rule prescribed, if the adjustments in respect of an excess profits tax taxable year result in a net increase, or an aggregate net increase, the portion of such increase which represents interest shall be allowed as a deduction in computing net income for the succeeding taxable year. Thus, under the facts set forth in the example contained in section 35.734-4, the portion of the net increase which represents interest is \$543.45 (interest on increases, \$792, minus interest on decreases, \$248.55), and such interest is allowable as a deduction in computing net income for the calendar year 1943.

If the adjustments in respect of an excess profits tax taxable year result in a net decrease, or an aggregate net decrease, the interest contained in that portion of such decrease which is subtracted from the tax for any taxable year shall be included in the gross income for the succeeding taxable year. For such purpose, no portion of the amount subtracted in any taxable year shall be deemed to represent interest until the portion of the net decrease which represents tax has been exhausted.

Example. For the calendar year 1942, Corporation X had an excess profits tax liability of \$9,000 (computed without regard to section 734) and an authorized adjustment under section 734 resulting in a net decrease of \$12,000, of which \$8,000 represents tax and \$4,000 represents interest. In giving effect to the adjustment, \$9,000 will be subtracted from the tax for 1942 and the balance will be carried over to succeeding taxable years. Since \$8,000 of the net decrease represents tax, only \$1,000 of the amount subtracted in 1942 represents interest and hence \$1,000 will be included as interest in the taxpayer's gross income for 1943. The entire amount of the \$3,000 to be carried over and subtracted from the tax for a succeeding taxable year represents interest, since the portion of the net decrease which represents tax is exhausted in 1942.

SEC. 735. NONTAXABLE INCOME FROM CERTAIN MINING AND TIMBER OPERATIONS. [ADDED BY SEC. 209(c), REV. ACT 1942.]

(a) DEFINITIONS.—For the purposes of this section, section 711(a) (1) (I), and section 711(a) (2) (K)—

(1) PRODUCER.—The term "producer" means a corporation which extracts minerals from a mineral property, or cuts logs from a timber block, in which an economic interest is owned by such corporation.

(2) MINERAL UNIT.—The term "mineral unit" means a unit of metal, coal, or nonmetallic substance in the minerals recovered from the operation of a mineral property.

(3) TIMBER UNIT.—The term "timber unit" means a unit of timber recovered from the operation of a timber block.

(4) **EXCESS OUTPUT.**—The term “excess output” means the excess of the mineral units or the timber units for the taxable year over the normal output.

(5) **NORMAL OUTPUT.**—The term “normal output” means the average annual mineral units, or the average annual timber units, as the case may be, recovered in the taxable years beginning after December 31, 1935, and not beginning after December 31, 1939 (hereinafter called “base period”), of the person owning the mineral property or the timber block (whether or not the taxpayer). The average annual mineral units or timber units shall be computed by dividing the aggregate of such mineral units or timber units for the base period by the number of months for which the mineral property or the timber block was in operation during the base period and by multiplying the amount so ascertained by twelve. In any case in which the taxpayer establishes, under regulations prescribed by the Commissioner with the approval of the Secretary, that the operation of any mineral property or any timber block is normally prevented for a specified period each year by physical events outside the control of the taxpayer, the number of months during which such mineral property or timber block is regularly in operation during a taxable year shall be used in computing the average annual mineral units, or timber units, instead of twelve. Any mineral property, or any timber block, which was in operation for less than six months during the base period shall, for the purposes of this section, be deemed not to have been in operation during the base period.

(6) **MINERAL PROPERTY.**—The term “mineral property” means a mineral deposit, the development and plant necessary for the extraction of the deposit, and so much of the surface of the land as is necessary for purposes of such extraction.

(7) **MINERALS.**—The term “minerals” means ores of the metals, coal, and such nonmetallic substances as abrasives, asbestos, asphaltum, barytes, borax, building stone, cement rock, clay, crushed stone, feldspar, fluorspar, fuller's earth, graphite, gravel, gypsum, limestone, magnesite, marl, mica, mineral pigments, peat, potash, precious stones, refractories, rock phosphate, salt, sand, silica, slate, soapstone, soda, sulphur, and talc.

(8) **TIMBER BLOCK.**—The term “timber block” means an operation unit existing as of December 31, 1941, which includes all the taxpayer's timber which would logically go to a single given point of manufacture, but shall not include any operation unit acquired after December 31, 1941.

(9) **NORMAL UNIT PROFIT.**—The term “normal unit profit” means the average profit for the base period per mineral unit for such period, determined by dividing the net income with respect to minerals recovered from the mineral property (computed with the allowance for depletion computed in accordance with the basis for depletion applicable to the current taxable year) during the base period by the number of mineral units recovered from the mineral property during the base period.

(10) **ESTIMATED RECOVERABLE UNITS.**—The term “estimated recoverable units” means the estimated number of units of metal, coal, or nonmetallic substances in the estimated recoverable minerals from the mineral property at the end of the taxable year plus the

excess output for such year. All estimates shall be subject to the approval of the Commissioner, the determinations of whom, for the purposes of this section, shall be final and conclusive.

(11) **EXEMPT EXCESS OUTPUT.**—The term "exempt excess output" for any taxable year means a number of units equal to the following percentages of the excess output for such year:

100 per centum if the excess output exceeds 50 per centum of the estimated recoverable units;

95 per centum if the excess output exceeds $33\frac{1}{3}$ but not 50 per centum of the estimated recoverable units;

90 per centum if the excess output exceeds 25 but not $33\frac{1}{3}$ per centum of the estimated recoverable units;

85 per centum if the excess output exceeds 20 but not 25 per centum of the estimated recoverable units;

80 per centum if the excess output exceeds $16\frac{2}{3}$ but not 20 per centum of the estimated recoverable units;

60 per centum if the excess output exceeds $14\frac{2}{7}$ but not $16\frac{2}{3}$ per centum of the estimated recoverable units;

40 per centum if the excess output exceeds $12\frac{1}{2}$ but not $14\frac{2}{7}$ per centum of the estimated recoverable units;

30 per centum if the excess output exceeds 10 but not $12\frac{1}{2}$ per centum of the estimated recoverable units;

20 per centum if the excess output exceeds 5 but not 10 per centum of the estimated recoverable units.

(12) **UNIT NET INCOME.**—The term "unit net income" means the amount ascertained by dividing the net income (computed with the allowance for depletion) from the coal or iron ore or the timber recovered from the coal mining property, iron mining property, or timber block, as the case may be, during the taxable year by the number of units of coal or iron ore, or timber, recovered from such property in such year.

(b) **NONTAXABLE INCOME FROM EXEMPT EXCESS OUTPUT.**—

(1) **GENERAL RULE.**—For any taxable year for which the excess output of mineral property which was in operation during the base period exceeds 5 per centum of the estimated recoverable units from such property, the nontaxable income from exempt excess output for such year shall be an amount equal to the exempt excess output for such year multiplied by the normal unit profit, but such amount shall not exceed the net income (computed with the allowance for depletion) attributable to the excess output for such year.

(2) **COAL AND IRON MINES.**—For any taxable year, the nontaxable income from exempt excess output of a coal mining or iron mining property which was in operation during the base period shall be an amount equal to the excess output of such property for such year multiplied by one-half of the unit net income from such property for such year, or an amount determined under paragraph (1), whichever the taxpayer elects in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

(3) **TIMBER PROPERTIES.**—For any taxable year, the nontaxable income from exempt excess output of a timber block which was in operation during the base period shall be an amount equal to the excess output of such property for such year multiplied by one-half of the unit net income from such property for such year.

(c) **NONTAXABLE BONUS INCOME.**—The term “nontaxable bonus income” means the amount of the income derived from bonus payments made by any agency of the United States Government on account of the production in excess of a specified quota of a mineral product or of timber the exhaustion of which gives rise to an allowance for depletion under section 23(m), but such amount shall not exceed the net income (computed with the allowance for depletion) attributable to the output in excess of such quota.

(d) **RULE IN CASE INCOME FROM EXCESS OUTPUT INCLUDES BONUS PAYMENT.**—In any case in which the income attributable to the excess output includes bonus payments (as provided in subsection (c)), the taxpayer may elect, under regulations prescribed by the Commissioner with the approval of the Secretary, to receive either the benefits of subsection (b) or subsection (c) with respect to such income as is attributable to excess output above the specified quota.

SEC. 35.735-1 GENERAL RULE.—Section 735 provides specific rules for the computation of nontaxable income from exempt excess output and of nontaxable bonus income which are excluded in the computation of excess profits net income of a producer of minerals, or a producer of logs or lumber from a timber block, as defined in such section.

SEC. 35.735-2 DEFINITIONS.—For the purposes of section 735, section 711(a)(1)(I), and section 711(a)(2)(K)—

(a) *Producer.*—The term “producer” means a corporation which extracts minerals from a mineral property, or cuts logs from a timber block, in which an economic interest is owned by such corporation. Although section 711(a)(1)(I) and section 711(a)(2)(K) exclude certain nontaxable income in the computation of excess profits net income in the case of a producer of logs or lumber, a producer of lumber is not within the provisions of this subsection unless such corporation is also a producer of the logs from which such lumber is sawed. An economic interest is possessed in every case in which the taxpayer has acquired, by investment, any interest in minerals in place or standing timber and secures, by any form of legal relationship, income derived from the severance and sale of the mineral or timber, to which it must look for a return of its capital. A taxpayer which has no capital investment in the mineral deposit or standing timber does not possess an economic interest merely because, through a contractual relation to the owner, it possesses a mere economic advantage derived from production. Thus, an agreement between the owner of an economic interest and another entitling the latter to purchase the product upon production or to share in the net income derived from the interest of such owner does not convey an economic interest. The mere ownership of the development and plant necessary to the extraction of the minerals in place or the felling and logging of the timber is not an economic interest for the purposes of

section 735. Thus, a corporation which owns the equipment necessary to the extraction of minerals or the logging of timber and which acts as an independent contractor or as an agent in extracting minerals or timber, receiving as consideration a portion of the net income from the property, but which does not own an economic interest in the mineral property or timber block is not a producer within the provisions of this subsection. However, the owner of the economic interest in the mineral property or timber block and from which the mineral or timber is being extracted by the independent contractor or the agent is the producer within the provisions of this subsection.

(b) *Mineral unit*.—The term “mineral unit” means a unit of metal, coal, or nonmetallic substance in the minerals recovered from the operation of a mineral property. A mineral unit does not mean the number of units of minerals as defined in subsection (g) of this section but refers to the units of metal, coal, or nonmetallic substances contained in such minerals. If a corporation extracts from the same mineral property two or more minerals containing different metals, coal, or nonmetallic substances, or if two or more metals, coal, or nonmetallic substances are contained in the same mineral extracted by a corporation from a mineral property, a determination of mineral units must be made with respect to each type of metal, coal, or nonmetallic substance contained in such minerals. A unit is any designation of quantity, such as ton, pound, quart, ounce, kilogram, gram, etc., customarily used by the taxpayer as a standard of measurement.

(c) *Timber unit*.—The term “timber unit” means a unit of timber recovered from the operation of a timber block. It does not mean the units of lumber, boards, or other wood products sawed from the timber, but refers to the actual logs felled prior to processing at the sawmill. The fact that more than one species of timber is cut by a taxpayer from a timber block shall not be taken into account and a timber unit shall not be established with respect to each species of timber. A unit is any designation of quantity such as board feet measure, log scale, cords, or other units customarily used by the taxpayer as a standard of measurement.

(d) *Excess output*.—The term “excess output” means the excess of the mineral units or the timber units for the taxable year over the normal output. If the taxpayer operated two or more mineral properties or two or more timber blocks, the excess output shall be determined with respect to each such mineral property and each such timber block and shall not be computed upon the basis of the aggregate of the mineral properties or timber blocks owned by the taxpayer. If two or more metals, coal, or nonmetallic substances are contained in the minerals extracted from a mineral property, the determination of the excess output of mineral products extracted from such mineral property

for an excess profits tax taxable year shall be made with respect to each separate type of metal, coal, or nonmetallic substance, i. e., the amount by which the mineral units of each type for the taxable year exceeds the normal output of such type. The excess output of a mineral property from which minerals are extracted containing two or more types of metals, coal, or nonmetallic substances shall not be made upon an aggregate basis, i. e., the amount by which the aggregate of all types of mineral units for the taxable year exceeds the aggregate of the normal output of all such types.

The mineral units for an excess profits tax taxable year shall be the number of units of metal, coal, or nonmetallic substances in the minerals recovered from a mineral property during the taxable year, which would be used in computing the allowance for depletion for the purposes of Chapter 1 if the depletion of the mineral property were computed without regard to discovery value or percentage depletion. See section 29.23(m)-2 of Regulations 111.

The timber units for an excess profits tax taxable year shall be the number of units of timber felled during the year, which is used in the computation of the depletion allowance for the purposes of Chapter 1. See section 29.23(m)-21 of Regulations 111. However, no timber felled or logs cut from standing timber acquired after December 31, 1941, shall be considered in determining the number of timber units for the taxable year.

(e) *Normal output.*—The term “normal output” means the average annual mineral units, or the average annual timber units, as the case may be, recovered in the taxable years beginning after December 31, 1935, and not beginning after December 31, 1939 (referred to in sections 35.735-1 through 35.735-5 as the base period) of the person owning the mineral property or the timber block, whether or not such person is the taxpayer claiming relief under section 711(a)(1)(I) or section 711(a)(2)(K), and section 735. A person includes an individual, a trust, estate, partnership, company, or corporation. See section 3797. If the mineral property or timber block was not owned by the taxpayer for the entire base period, the taxpayer must, in its first excess profits tax return in which the benefits of section 711(a)(1)(I) or section 711(a)(2)(K), and section 735 are claimed, state the name and address of each person owning the mineral property or timber block during the base period and submit evidence establishing the mineral units or the timber units recovered from the mineral property or timber block by such other person during the period of its ownership, and the number of months in such period.

In any case in which two or more metals, coal, or nonmetallic substances are contained in the minerals recovered from a mineral prop-

erty, a normal output shall be computed with respect to each type of metal, coal, or nonmetallic substance in such minerals.

The average annual mineral units or timber units shall be computed by dividing the aggregate of the mineral units of each type of metal, coal, or nonmetallic substance or the aggregate of the timber units for the base period by the number of months for which the mineral property or timber block was in operation during the base period and by multiplying the amount so ascertained by twelve. In any case in which the taxpayer establishes that the operation of a mineral property or a timber block is normally prevented for a specified period each year by physical events outside the control of the taxpayer, the number of months during which such mineral property or timber block is regularly in operation during a taxable year shall be used in computing the average annual mineral units, or timber units, instead of twelve. If any excess profits tax taxable year for which excess output is computed for the purposes of section 735 is a taxable year of less than twelve months, the number of months in such year, in lieu of twelve and in lieu of the number of months specified in the preceding sentence (if less than such number of months), shall be used in computing the average annual mineral units or timber units.

The mineral units for a taxable year in the base period shall be the number of units of each type of metal, coal, or nonmetallic substance in the minerals recovered from a mineral property during the taxable year, which would be used in computing the depletion allowance for the purposes of Chapter 1 if the depletion of the mineral property were computed without regard to discovery value or percentage depletion. See section 29.23(m)-2 of Regulations 111. The timber units for a taxable year shall be the number of units of timber felled during the year used in the computation of the depletion allowance for the purposes of Chapter 1. See section 29.23(m)-21 of Regulations 111.

Any mineral property, or any timber block, which was in operation for less than six months during the base period shall, for the purposes of section 735, be deemed not to have been in operation during the base period. Such months need not be consecutive months.

(f) *Mineral property.*—The term “mineral property” means a mineral deposit, the development and plant necessary for the extraction of the deposit, and so much of the surface of the land as is necessary for the purposes of such extraction. The term “mineral deposit” refers to the minerals in place. The taxpayer’s interest in each separate mineral property is a separate “property.” If the mineral deposit in which a taxpayer owns an economic interest extends beyond the boundaries of a single tract or parcel of land a separate mineral property exists with respect to each tract or parcel of land into which the mineral deposit extends. Where two or more mineral properties are

included in a single tract or parcel of land, the taxpayer's interest in such mineral properties may be considered to be a single "property," provided such treatment is consistently followed.

(g) *Minerals*.—The term "minerals" means ores of the metals, coal, and such nonmetallic substances as abrasives, asbestos, asphaltum, barytes, borax, building stone, cement rock, clay, crushed stone, feldspar, fluorspar, fuller's earth, graphite, gravel, gypsum, limestone, magnesite, marl, mica, mineral pigments, peat, potash, precious stones, refractories, rock phosphate, salt, sand, silica, slate, soapstone, soda, sulphur, and talc.

(h) *Timber block*.—The term "timber block" means an operation unit existing as of December 31, 1941, which includes all the taxpayer's timber which would logically go to a single given point of manufacture, but shall not include any operation unit acquired after December 31, 1941. In those cases in which the point of manufacture is at a considerable distance, or in which the logs or other products will probably be sold in a log or other market, the block may be a logging unit which includes all of the taxpayer's timber which would logically be removed by a single logging development.

(i) *Normal unit profit*.—The term "normal unit profit" means the average profit for the base period per mineral unit for such period, determined by dividing the net income with respect to minerals recovered from the mineral property (computed with the allowance for depletion determined in accordance with the basis for depletion, cost basis depletion, discovery value depletion, or percentage depletion, applicable to the current taxable year) during the base period by the total number of mineral units recovered from the mineral property during the base period.

If two or more metals, coal, or nonmetallic substances are contained in the minerals extracted from a mineral property, a normal unit profit shall be established for each class of mineral unit. The normal unit profit for each class of mineral unit shall be determined by dividing the net income with respect to such type of metal, coal, or nonmetallic substance in the minerals recovered from the mineral property during the base period by the total number of mineral units of such class for the base period.

(1) *Net income*.—Net income with respect to minerals recovered from the mineral property (computed with the allowance for depletion) means the "gross income from the property" as defined in paragraph (2) of this subsection less the allowable deductions attributable to the mineral property with respect to which exempt excess output is computed and the allowable deductions attributable to the processes listed in paragraph (2) in so far as they relate to the product of such property, including overhead and operating expenses, development

costs properly charged to expense, depreciation, taxes, losses sustained, and including the allowance for depletion. The allowance for depletion shall be computed in accordance with the provisions of section 23(m) and section 114(b) and the regulations thereunder. The allowance for depletion for each year during the base period shall, for the purposes of section 735, be computed upon the same basis used in computing the allowance for depletion during the excess profits tax taxable year beginning after December 31, 1941, for which the benefits of section 735 are claimed. Thus, if during the base period the taxpayer computed the allowance for depletion with respect to a mineral property upon the cost basis, and if during each excess profits tax taxable year, for which the benefits of section 735 are claimed, the taxpayer computes the allowance for depletion based upon a percentage of income, the allowance for depletion for each year in the base period shall be recomputed as a percentage of income under the law applicable to each such year. In cases where the taxpayer engages in activities in addition to mineral extraction and to the processes listed in paragraph (2), deductions for depreciation, taxes, general expenses, and overhead, which cannot be directly attributed to any specific activity, shall be fairly apportioned between (A) the mineral extraction and the processes listed in paragraph (2) and (B) the additional activities, taking into account the ratio which the operating expenses directly attributable to the mineral extraction and the processes listed in paragraph (2) bear to the operating expenses directly attributable to the additional activities. If more than one mineral property is involved, the deductions apportioned to the mineral extraction and the processes listed in paragraph (2) shall, in turn, be fairly apportioned to the several properties, taking into account their relative production.

If two or more metals, coal, or nonmetallic substances are contained in the minerals extracted from a mineral property, a net income with respect to each type of metals, coal, or nonmetallic substance shall be established. Such net income shall be the gross income with respect to such type minus the allowable deductions for such year attributable to such type. The allowable deductions for any taxable year attributable to each type of metal, coal, or nonmetallic substance shall be computed as follows: There shall be determined an amount which bears the same ratio to the total allowable deductions (not including the allowance for depletion) attributable to the mineral property from which the minerals containing such type of metal, coal, or nonmetallic substance has been recovered, as the gross income from such type of metal, coal, or nonmetallic substance bears to the total gross income from such property. To this amount shall be added the allowance for depletion computed with respect to such type of metal, coal, or nonmetallic substance.

(2) *Gross income from the property.*—For the purposes of section 735 the term “gross income from the property” for any year in the base period means the amount for which the taxpayer sold the crude mineral product (the product in the form in which it emerges from the mine) of the mineral property in the immediate vicinity of the mine, but, if the product was transported or processed (other than by processes excepted below) before sale, it means the representative market or field price (as of the date of sale) of crude mineral product of like kind and grade before such transportation or processing. If there was no such representative market or field price (as of the date of sale), then there shall be used in lieu thereof the representative market or field price of the first marketable product resulting from any process or processes (or, if the product in its crude state was merely transported, the price for which sold) minus the costs and proportionate profits attributable to the transportation and the processes not listed below. The processes excepted are as follows:

(A) In the case of coal—cleaning, breaking, sizing, and loading at the mine for shipment;

(B) In the case of sulphur—pumping to vats, cooling, breaking, and loading at the mine for shipment;

(C) In the case of iron ore, ball and sagger clay or rock asphalt, and ores which are customarily sold in the form of the crude mineral product—sorting or concentrating to bring to shipping grade, and loading at the mine for shipment; and

(D) In the case of lead, zinc, copper, gold, silver, or fluorspar ores and ores which are not customarily sold in the form of the crude mineral product—crushing, concentrating (by gravity or flotation), and other processes to the extent to which they do not beneficiate the product in greater degree (in relation to the crude mineral product on the one hand and the refined product on the other) than crushing and concentrating (by gravity or flotation).

In case any of the excepted processes were not applied in the immediate vicinity of the mining district in which the mine is located, costs incurred for transportation to the processing location and, if transported by taxpayer, the proportionate profits attributable to transportation should be subtracted from the sale price of the product to determine “gross income from the property.”

There shall be excluded in determining the “gross income from the property,” for each year in the base period, an amount equal to any rents or royalties which were paid or incurred by the taxpayer in respect of the property and were not otherwise excluded from the “gross income from the property.” If royalties in the form of bonus payments were paid in respect of the property in a taxable year in the base period or any prior years, or if advanced royalties

were paid in respect of the property in any taxable year ending prior to December 31, 1939, the amount excluded from "gross income from the property" for a taxable year in the base period on account of such payments shall be an amount equal to that part of such payments which is allocable to the product sold during the taxable year.

If the taxpayer paid rents, royalties, or bonuses with respect to the mineral property during the base period, and in an excess profits tax taxable year for which the benefits of section 735 are claimed owns an economic interest in such property which does not require the payments of rents, royalties, or bonus payments, the amount of such rents, royalties, and bonuses paid during the base period shall, for the purposes of section 735, not be deducted in the computation of the gross income from the property. If the taxpayer paid rents, royalties, or bonuses with respect to the mineral property during the base period and in an excess profits tax taxable year for which the benefits of section 735 are claimed pays rents, royalties, or bonuses in amounts different from those paid during the base period because of a change in its economic interest, the gross income from the property during the base period shall be recomputed as if the new contractual terms pursuant to which the new rents, royalties, or bonuses are paid had been in effect during the base period. If the economic interest of the taxpayer during the base period was such that it did not pay rents, royalties, or bonuses, but such interest has changed so that during the excess profits tax taxable year for which the benefits of section 735 are claimed the taxpayer pays rents, royalties, or bonuses, the gross income from the property during the base period shall be recomputed as if the contractual agreement pursuant to which rents, royalties, or bonuses are paid during the excess profits tax taxable year were in full force and effect during the base period. If the economic interest of a person other than the taxpayer in the mineral property during any year in the base period was different from the economic interest of the taxpayer in the excess profits tax taxable year for which the benefits of section 735 are claimed, the gross income of such person from the property during such base period year shall be recomputed as if its economic interest in the mineral property were the same as the economic interest of the taxpayer in the excess profits tax taxable year for which the benefits of section 735 are claimed.

If two or more metals, coal, or nonmetallic substances are contained in the minerals extracted from a mineral property, the gross income from such property shall be allocated to each type of metal, coal, or nonmetallic substance for which a separate mineral unit is established. If the gross income from the property is determined by

excluding the costs and proportionate profits attributable to transportation and to the processes not listed above, or if such gross income is an amount different from the gross proceeds received from the sale of the minerals, the gross income attributable to each type of metal, coal, or nonmetallic substance shall be an amount which bears the same ratio to the gross income from the property which the gross proceeds received from the sale of such type of metal, coal, or nonmetallic substance in the minerals bears to the total gross proceeds received from the sales of all such types.

(j) *Estimated recoverable units.*—The term “estimated recoverable units” means the estimated number of units of metal, coal, or nonmetallic substances in the estimated recoverable minerals from the mineral property at the end of the excess profits tax taxable year for which the benefits of section 735 are claimed plus the excess output for such year. If the number of recoverable units of metal, coal, and nonmetallic substances in the minerals in the property have been previously estimated for the prior year or years, and if there has been no known change in the facts upon which the prior estimate was based, the number of recoverable units of metal, coal, and nonmetallic substances in the minerals in the property as of the taxable year will be the number remaining from the prior estimate. Thus, the recoverable units estimated to remain at the end of a taxable year shall be computed, generally, as the estimated recoverable units as of the beginning of the taxable year minus the output for the year. In any case in which it is ascertained either by the taxpayer or the Commissioner as the result of operations or development work prior to the close of the taxable year that the remaining recoverable mineral units are materially greater or less than the number remaining from the prior estimate, the estimate of the remaining recoverable units shall be revised and the revised estimate will be used for the purposes of computing exempt excess output under the provisions of section 735(a) (11) and section 35.735-2(k) unless a change in the facts requires another revision. Regardless of the method of determining the estimated number of units of metal, coal, or nonmetallic substances in the estimated recoverable minerals from the mineral property at the end of the excess profits tax taxable year, the estimated recoverable units for the purposes of section 735 shall be the number of such units plus the excess output for such year. The estimated number of units of metal, coal, or nonmetallic substances in the estimated recoverable minerals means the metal, coal, or nonmetallic substance content of the minerals, and not the estimated recoverable units of the minerals which are the ores of the metals, coal, or nonmetallic substances. The estimated recoverable units from any mineral property shall be determined with respect to each type of metal, coal, or nonmetallic sub-

stance in the estimated recoverable minerals and shall not be determined as the aggregate of all classes of mineral units attributable to all such types of metal, coal, or nonmetallic substances. As to the determination of the estimated recoverable units of mineral products, see section 29.23(m)-9 of Regulations 111.

All estimates of recoverable units of metal, coal, and nonmetallic substances in the estimated recoverable minerals from the mineral property shall be subject to the approval of the Commissioner, and the determination of the Commissioner for the purposes of section 735 shall be final and conclusive.

(k) *Exempt excess output.*—The term “exempt excess output” for any taxable year means a number of units equal to the following percentages of the excess output for such year:

100 percent if the excess output exceeds 50 percent of the estimated recoverable units;

95 percent if the excess output exceeds $33\frac{1}{3}$ but not 50 percent of the estimated recoverable units;

90 percent if the excess output exceeds 25 but not $33\frac{1}{3}$ percent of the estimated recoverable units;

85 percent if the excess output exceeds 20 but not 25 percent of the estimated recoverable units;

80 percent if the excess output exceeds $16\frac{2}{3}$ but not 20 percent of the estimated recoverable units;

60 percent if the excess output exceeds $14\frac{2}{7}$ but not $16\frac{2}{3}$ percent of the estimated recoverable units;

40 percent if the excess output exceeds $12\frac{1}{2}$ but not $14\frac{2}{7}$ percent of the estimated recoverable units;

30 percent if the excess output exceeds 10 but not $12\frac{1}{2}$ percent of the estimated recoverable units;

20 percent if the excess output exceeds 5 but not 10 percent of the estimated recoverable units.

Since the excess output and the estimated recoverable units, in the case of a mineral property from which are extracted minerals containing two or more types of metal, coal, or nonmetallic substances, shall be determined with respect to the mineral units comprising the excess output and the mineral units contained in the estimated recoverable units for each separate type of metal, coal, or nonmetallic substance, the percentage which the excess output is of the estimated recoverable units shall be based upon the excess output and the estimated recoverable units of each separate type and shall not be computed with respect to the aggregate of all classes of mineral units. The percentage so determined with respect to each separate type of metal, coal, or nonmetallic substance shall then be multiplied by the excess output of such type of metal, coal, or nonmetallic substance

in the minerals recovered from the mineral property, and the product of the two shall be considered the exempt excess output of that type of metal, coal, or nonmetallic substance.

(l) *Unit net income*.—The term “unit net income” means the amount of net income per mineral unit of coal or iron or per timber unit for any excess profits tax taxable year for which the benefits of section 735 are claimed. It is ascertained by dividing the net income (computed with the allowance for depletion used in computing net income for the purposes of Chapter 1 for such year) from the coal or iron ore, or the timber, recovered during the taxable year from the coal mining property, the iron mining property, or the timber block, as the case may be, by the number of mineral units contained in the coal or iron ore recovered from such coal or iron mining property or by the number of timber units recovered from such timber block, in such year.

For the purposes of section 735(a) (12) and section 735(b) (2), the term “coal mining property” means the aggregate of all tracts or parcels of land containing coal deposits in which economic interests were owned, and from which coal was extracted, by the taxpayer at any time after the beginning of the base period (excluding, however, any tract or parcel of land in which an economic interest was acquired, and from which coal was extracted, by any other person subsequent to the last date of ownership and operation by the taxpayer) to the extent that the coal extracted therefrom by the taxpayer was processed at a single preparation plant, regardless of whether the economic interest in one such tract or parcel of land differed from that in another.

For the purposes of section 735(a) (12) and section 735 (b) (2), the term “iron mining property” means the aggregate of all tracts or parcels of land containing iron ore deposits in which economic interests were owned, and from which iron ore was extracted, by the taxpayer at any time after the beginning of the base period (excluding, however, any tract or parcel of land in which an economic interest was acquired, and from which iron ore was extracted, by any other person subsequent to the last date of ownership and operation by the taxpayer) to the extent that such tracts or parcels of land were operated by the taxpayer as an operation unit, regardless of whether the economic interest in one tract or parcel of land differed from that in another.

The net income (computed with the allowance for depletion) from the coal or the iron ore recovered from the coal mining property or the iron mining property during an excess profits tax taxable year for which the benefits of section 735(b) (2) are claimed shall be the net income from the coal mining property or iron mining property from which such coal or iron ore is recovered, computed in a manner

similar to that described in section 35.735-2(i) with respect to a mineral property as if such coal mining property or iron mining property were a mineral property, except that the amount of depletion allowed in the computation of such net income shall be computed according to sections 23(m) and 114, and the regulations thereunder.

The determination of net income from a timber block for an excess profits tax taxable year must be made with respect to each timber block separately and cannot be made with respect to the aggregate of the timber blocks owned by the taxpayer. Net income from a timber block includes only income which is attributable to that portion of the operation unit which was in existence on December 31, 1941; net income attributable to any standing timber acquired after December 31, 1941, and which after such date has become a part of the timber block existing on December 31, 1941, must be excluded. Net income from timber recovered from a timber block (computed with the allowance for depletion) means the net income attributable to timber and logging operations, not including transportation of the logs to the log or other market. That portion of the taxpayer's net income attributable to transportation or to manufacturing or remanufacturing, if the taxpayer which is a producer of logs from a timber block carries its operations beyond the logging stage, must be eliminated. If the taxpayer is engaged in activities in addition to timber and logging operations, the net income attributable to timber recovered from a timber block shall be computed as follows:

(1) *Net income*.—Net income from timber recovered from a timber block (computed with the allowance for depletion) means the gross income from the timber block as defined in (2) of this subsection, less the allowable deductions attributable to the timber block with respect to which exempt excess output is computed and the allowable deductions attributable to timbering and logging operations, but not including transportation of the logs to the log or other market, insofar as they relate to logs cut by the taxpayer from the timber block, including overhead and operating expenses, development costs properly charged to expense, depreciation, taxes, losses sustained, and including the allowance for depletion. The allowance for depletion shall be that used in computing net income for the purposes of Chapter 1 for the taxable year. In cases where the taxpayer engages in activities in addition to timbering and logging operations, including in such additional activities transportation of the logs to the log or other market, deductions for depreciation, taxes, general expenses, and overhead which cannot be directly attributed to any specific activity shall be fairly apportioned between (A) the timber and logging operations, and (B) the additional activities, taking into account the ratio which the operating expenses directly attributable to the tim-

ber and logging operations bear to the operating expenses directly attributable to the additional activities. If more than one timber block is involved, the deductions apportioned to the timber and logging operations shall, in turn, be fairly apportioned to the several timber blocks, taking into account their relative production.

(2) *Gross income from the timber block.*—Gross income from the timber block means the amount for which the taxpayer sold the timber or the logs in the immediate vicinity of the timber block, but if the logs were transported or processed or manufactured or remanufactured before sale, it means the representative market or field price (as of the date of sale) of logs of like kind and grade before such transportation, processing, manufacture, or remanufacture. If there was no such representative market or field price (as of the date of sale), then there shall be used in lieu thereof the representative market or field price of the first marketable product resulting from any processing, manufacture, or remanufacture (or, if the logs were merely transported, the price for which sold) minus the costs and proportionate profits attributable to the transportation and the processes, manufacture, and remanufacture.

In all cases there shall be excluded in determining the gross income from the timber block an amount equal to any rents or royalties which were paid or incurred by the taxpayer in respect of the timber block and are not otherwise excluded from the gross income from the timber block. If royalties in the form of bonus payments have been paid in respect of the timber block in the taxable year or any prior years or if advanced royalties have been paid in respect of the property in any taxable year ending prior to December 31, 1939, the amount excluded from gross income from the timber block for the current taxable year on account of such payments shall be an amount equal to that part of such payments which is allocable to the product sold during the taxable year. If advanced royalties have been paid in respect of the timber block in any taxable year ending on or after December 31, 1939, the amount excluded from gross income from the timber block for the current taxable year on account of such payments shall be an amount equal to the deduction for such taxable year taken on account of such payments pursuant to the rules provided in section 29.23(m)–10(e) of Regulations 111 with respect to advanced royalties paid in the case of mineral properties.

SEC. 35.735–3 NONTAXABLE INCOME FROM EXEMPT EXCESS OUTPUT.—Nontaxable income from exempt excess output is excluded in the computation of excess profits net income under section 711(a)(1) (I) if the taxpayer uses the excess profits credit based on income or under section 711(a)(2)(K) if the taxpayer uses the excess profits credit based on invested capital, and is determined as follows:

(a) *General rule.*—If the excess output of a mineral property which was in operation during the base period exceeds 5 percent of the estimated recoverable units from such mineral property, computed as provided in section 35.735-2(j) the nontaxable income from exempt excess output shall be an amount equal to the exempt excess output for such year (computed under section 35.735-2(k)) multiplied by the normal unit profit (computed under section 35.735-2(i)). In no event shall the amount of nontaxable income from exempt excess output exceed the net income (computed with the allowance for depletion) attributable to the excess output for such year. The net income attributable to excess output shall be that percentage of the net income from the mineral property which the excess output for the taxable year is of the total output for the taxable year. The net income from the mineral property shall be computed in accordance with the rules provided in section 35.735-2(i) for the computation of net income from the mineral property for a taxable year in the base period.

If mineral units are determined for two or more types of metals, coal, or nonmetallic substances, the nontaxable income shall be determined with respect to the exempt excess output of each type of metal, coal, or nonmetallic substance. In no event shall nontaxable income from exempt excess output be determined with respect to any such type unless the mineral property was in operation during the base period and unless the excess output of such type exceeds 5 percent of the estimated recoverable units of such type of metal, coal, or nonmetallic substance in the mineral property.

If the minerals recovered from a mineral property contain two or more types of metals, coal, or nonmetallic substances, the nontaxable income from exempt excess output of such property for a taxable year shall be the aggregate of the nontaxable incomes from exempt excess output of each type of metal, coal, or nonmetallic substance. The nontaxable income from exempt excess output of each type of metal, coal, or nonmetallic substance shall be an amount equal to the exempt excess output of such type of metal, coal, or nonmetallic substance (see section 35.735-2(k)), multiplied by the normal unit profit for such type (see section 35.735-2(i)). The nontaxable income from exempt excess output attributable to each type of metal, coal, or nonmetallic substance shall not exceed the net income (computed with the allowance for depletion) attributable to the excess output of such type for the taxable year. The net income attributable to the excess output of each type of mineral unit shall be determined as follows: The net income attributable to the mineral property for the taxable year shall be fairly allocated to each type of metal, coal, or nonmetallic substance contained in the minerals recovered from the mineral property

in such year in accordance with the principles set forth in section 35.735-2(i). The amount so allocated shall be divided by the total number of mineral units of such type of metal, coal, or nonmetallic substance for the taxable year, and the amount so determined shall be multiplied by the excess output of the mineral units of such type, determined in accordance with section 35.735-2(d), for the year.

The provisions of this subsection may be illustrated by the following examples:

Example (1). Assume that the taxpayer, which is on the calendar year basis, owns a mineral property from which is extracted a mineral containing one nonmetallic substance. The total output of such property during the four calendar years in the base period, the first of which began in 1936, was 416,000 tons and the aggregate of the net incomes for such years (including the allowance for depletion computed upon the same basis as for the year 1942) was \$1,248,000. The normal output is 104,000 tons and the normal unit profit is \$3 per ton. During 1942 minerals containing 200,000 tons of the nonmetallic substance were extracted from the property at a unit profit of \$3.50 per ton. The net income for such year was \$700,000. As of December 31, 1942, it is estimated that 1,000,000 tons of the nonmetallic substance remained in the mineral property. The amount of nontaxable income from exempt excess output to be excluded in the computation of excess profits net income for 1942 is \$57,600, computed as follows:

1. Normal output (tons)-----	104, 000
2. Output for 1942 (tons)-----	200, 000
3. Excess output for 1942 (tons)-----	96, 000
4. Estimated recoverable units for 1942 (1,000,000 tons plus item 3) -	1, 096, 000
5. Percentage which item 3 is of item 4 (percent)-----	8.8
6. Percentage of item 3 to be used in computing exempt excess output (percent) -----	20
7. Exempt excess output for 1942 (tons) (item 3 times item 6)-----	19, 200
8. Normal unit profit (per ton)-----	\$3. 00
9. Nontaxable income from exempt excess output (item 8 times item 7, but not in excess of item 12)-----	\$57, 600. 00
10. Net income for 1942-----	\$700, 000. 00
11. Unit net income for 1942 (per ton) (item 10 divided by item 2) --	\$3. 50
12. Net income attributable to excess output for 1942 (item 3 times item 11)-----	\$336, 000. 00

Example (2). Corporation A, which is on the calendar year basis, owns a mineral property from which it extracts minerals containing gold and silver. For each of the four taxable years in the base period it recovered 250,000 tons of a \$7.75 ore, i. e., minerals assaying 10 ounces of silver and 0.05 ounce of gold per ton, the price of silver being \$0.60 per ounce and of gold being \$35 per ounce during such

period. The output of silver for each base period year was 2 500,000 ounces, and of gold was 12,500 ounces. The gross income for each base period year was \$1,937,500, constituting \$1,500,000 attributable to silver and \$437,500 attributable to gold. Allowable deductions, including the smelter charges for each year but excluding the allowance for depletion, amounted to \$1,000,000. Of the amount of such deductions, \$774,193.55 represented the amount allocable to silver production $\left(\frac{1,500,000}{1,937,500} \text{ times } \$1,000,000\right)$ and \$225,806.45 represented the amount allocable to gold production $\left(\frac{437,500}{1,937,500} \text{ times } \$1,000,000\right)$. The net income from the mineral property (computed without the allowance for depletion) was \$725,806.45 attributable to silver and \$211,693.55 attributable to gold. The allowance for percentage depletion computed with respect to silver mining was \$225,000 (15 percent of \$1,500,000 but not in excess of 50 percent of \$725,806.45); the allowance for such depletion computed with respect to gold mining was \$65,625 (15 percent of \$437,500 but not in excess of 50 percent of \$211,693.55). In 1942, 320,000 tons of ore were extracted from the mineral property. The character of the ore encountered had changed so that in 1942 it was \$11.375 ore, i. e., minerals which assayed 15 ounces of silver and 0.025 ounce of gold to the ton, the price of silver being \$0.70 per ounce and the price of gold \$35 per ounce. The total output of silver for 1942 was 4,800,000 ounces; the total output of gold was 8,000 ounces. The gross income for 1942 was \$3,640,000, consisting of \$3,360,000 attributable to silver and \$280,000 attributable to gold. Allowable deductions, including the smelter charges for the year but excluding the allowance for depletion, amounted to \$1,280,000. Of the amount of such deductions, \$1,181,538.46 represented the amount allocable to silver production $\left(\frac{3,360,000}{3,640,000} \text{ times } \$1,280,000\right)$ and \$98,461.54 represented the amount allocable to gold production $\left(\frac{280,000}{3,640,000} \text{ times } \$1,280,000\right)$. The net income from the mineral property (computed without the allowance for depletion) was \$2,178,461.54 attributable to silver and \$181,538.46 attributable to gold. The allowance for percentage depletion computed with respect to silver mining was \$504,000 (15 percent of \$3,360,000 but not in excess of 50 percent of \$2,178,461.54); the allowance for such depletion computed with respect to gold mining was \$42,000 (15 percent of \$280,000 but not in excess of 50 percent of \$181,538.46). It is estimated that as of December 31, 1942, there were 19,200,000 units of silver and 32,000 units of gold remaining in the mineral property. There is no non-taxable income from exempt excess output of gold, since the normal

output exceeds the 1942 output of that metal. The nontaxable income from exempt excess output of silver is \$138,220.80, computed as follows:

	Silver	Gold
1. Normal output (ounces):		
a. Silver (10,000,000 divided by 4)	2,500,000	
b. Gold (50,000 divided by 4)		12,500
2. Output for 1942 (ounces)	4,800,000	8,000
3. Excess output (item 1a or 1b, minus item 2)	2,300,000	0
4. Estimated recoverable units as of December 31, 1942 (ounces):		
a. Silver (19,200,000 plus 2,300,000)	21,500,000	
b. Gold (32,000 plus 0)		32,000
5. Percentage which item 3 is of item 4a or 4b (percent)	10.7	0
6. Percentage of item 3 to be used in computing exempt excess output (percent)	30	0
7. Exempt excess output (ounces) (item 3 times item 6)	690,000	0
8. Normal unit profit per ounce (item 17)	\$0.20032	\$11.68548
9. Nontaxable income from exempt excess output (item 7 times item 8) but not in excess of item 24	\$138,220.80	0
NORMAL UNIT PROFIT		
10. Gross income from the mineral property for each base period year	\$1,500,000.00	\$437,500.00
11. Allowable deductions (excluding allowance for depletion) for each base period year	774,193.55	225,806.45
12. Net income from the mineral property (excluding allowance for depletion) for each base period year	725,806.45	211,693.55
13. Allowance for percentage depletion	225,000.00	65,625.00
14. Net income from the mineral property for each base period year	500,806.45	146,068.55
15. Aggregate net income from the mineral property for the base period	\$2,003,225.80	\$584,274.20
16. Aggregate mineral units recovered during base period (ounces)	10,000,000	50,000
17. Normal unit profit (item 15 divided by item 16)	\$0.20032	\$11.68548
NET INCOME ATTRIBUTABLE TO EXCESS OUTPUT		
18. Gross income from the mineral property for 1942	\$3,360,000.00	\$280,000.00
19. Allowable deductions (excluding allowance for depletion) for 1942	1,181,538.46	98,461.54
20. Net income from the mineral property (excluding allowance for depletion) for 1942	2,178,461.54	181,538.46
21. Allowance for percentage depletion	504,000.00	42,000.00
22. Net income from the mineral property for 1942	1,674,461.54	139,538.46
23. Unit net income for 1942 (item 22 divided by item 2)	\$0.348346	\$17.4423
24. Net income attributable to excess output (item 3 times item 23)	\$802,345.80	0

If income attributable to a strategic mineral as defined in section 731 is exempt from the excess profits tax pursuant to the provisions of such section, nontaxable income from exempt excess output of such strategic mineral shall not be computed for the purposes of section 735(b) (1) or of section 711(a) (1) (I) or section 711(a) (2) (K). The portion of gross income and allowable deductions attributable to such strategic mineral shall be excluded from the net income from

the mineral property in determining the net income attributable to other metals or nonmetallic substances in the minerals recovered from such mineral property for the base period and for the excess profits tax taxable year for which the benefits of section 735 are claimed.

(b) *Coal and iron mines.*—With respect to any excess profits tax taxable year beginning after December 31, 1941, the nontaxable income from exempt excess output of a coal mining or an iron mining property which was in operation during the base period shall be whichever of the following amounts the taxpayer elects—

(1) an amount equal to the excess output of such coal mining or iron mining property, determined under this subsection, for such year multiplied by one-half of the unit net income determined under section 35.735-2(l) from such property for such year, or

(2) an amount determined under section 35.735-3(a).

In order to elect the amount provided in (1) of this subsection, the excess output of the coal mining property or iron mining property (as defined in section 35.735-2(l)) which was in operation during the base period need not exceed 5 percent of the estimated recoverable units in such property. As to the election with respect to the amount provided in (2) of this subsection, see section 735(b)(1) and section 35.735-3(a).

For the purposes of the computation of the amount described in (1) of this subsection for an excess profits tax taxable year—

A coal mining property or an iron mining property (as defined in section 35.735-2(l)) shall be considered to have been in operation during the base period if any part of such property was in operation for six months or more during the base period.

The excess output of a coal mining property or an iron mining property which was in operation during the base period shall be computed upon the basis of the coal mining property or the iron mining property and shall be the excess of the aggregate of the mineral units extracted from such coal mining or iron mining property during the taxable year over the normal output of such property. The normal output of a coal mining property or an iron mining property shall be computed with respect to such property in a manner similar to that described in section 35.735-2(e) with respect to a mineral property, as if such coal mining property or iron mining property were a mineral property.

The election pursuant to section 735(b) and this subsection shall be made in the excess profits tax return, filed on or before the last day required by law for the filing of such return, for the taxable year for which the benefits of section 735 are claimed. The last day

required by law for the filing of such return includes the last day of the period of any extension of time granted for such filing. Such election must be made for each excess profits tax taxable year for which the benefits of section 735(b)(2) are claimed. An election made with respect to a taxable year to compute nontaxable income from exempt excess output pursuant to the provisions of section 735(b)(2) and section 35.735-3(b)(1) or section 30.735-3(b)(1) of Regulations 109 does not preclude the taxpayer from electing for a subsequent year to compute nontaxable income pursuant to the provisions of section 735(b)(1) and section 35.735-3(a) provided the taxpayer satisfies the requirements there provided, and vice versa. For any excess profits tax taxable year for which an election is made under section 735(b)(2) and this subsection, such election shall be made by the taxpayer by attaching to its excess profits tax return a statement showing the method of computation and the amount of nontaxable income from exempt excess output elected under the provisions of section 735(b)(2) and this subsection. An election made by the taxpayer pursuant to the provisions of section 30.735-3(b) of Regulations 109 shall be deemed to be made pursuant to the provisions of this subsection. If the taxpayer has failed so to elect or desires to change its election, such election or change in election may, subject to the approval of the Commissioner, be made by the taxpayer filing with the Commissioner of Internal Revenue, Washington, D. C., within the period of limitations for the filing of claims for credit or refund with respect to the year or years involved, a notice of its election or change in election accompanied by a recomputation of its income and excess profits taxes for such years. If the recomputation results in an overpayment for any of such years, the taxpayer should file a claim for refund on Form 843 in accordance with the provisions of section 322.

The provisions of this subsection may be illustrated by the following example:

Example. Assume that during the taxable year 1942 a corporation owned several tracts of land containing coal deposits which it had operated for more than six months during the base period. During the taxable year 1942, the coal extracted by the taxpayer from such land was processed at a single preparation plant, so that for the purposes of the computation provided by (1) of this subsection such land constitutes a coal mining property. The normal output of the coal mining property was 350,000 tons. The output for the calendar year 1942 was 450,000 tons. The net income from the coal mining property during 1942 was \$103,500. Assume that for the year 1942, the corporation elected to compute an amount of nontaxable income from exempt excess output of the coal mining

property under the rule prescribed by (1) of this subsection rather than under (2) of this subsection. Such amount of nontaxable income from exempt excess output would be \$11,500, computed as follows:

1. Normal output (tons)-----	350,000
2. Output for 1942 (tons)-----	450,000
3. Excess output (tons) (item 2 less item 1)-----	100,000
4. Net income from coal extracted from coal mining property in 1942-----	\$103,500.00
5. Unit net income per ton for 1942 (item 4 divided by item 2)-----	\$0.23
6. Nontaxable income from exempt excess output computed pursuant to section 735(b) (2) and without regard to section 735(b) (1) (item 3 times one-half of item 5)-----	\$11,500.00

(c) *Timber properties.*—The nontaxable income from exempt excess output of a timber block which was in operation during the base period shall be an amount equal to the excess output of such timber block for such year, determined under section 35.735-2(d), multiplied by one-half of the unit net income from such timber block for such year, determined under section 35.735-2(l).

The provisions of this subsection may be illustrated by the following example:

Example. Assume that the normal unit output of a timber block operated by Corporation T during the base period was 20,000,000 board feet log scale. The output of timber units for the taxable year 1942 was 32,000,000 board feet log scale and the net income attributable to the timber block, and to timber and logging operations, not including transportation, was \$320,000. The nontaxable income from exempt excess output of the timber block for 1942 is \$60,000, computed as follows:

1. Normal output (M board feet log scale)-----	20,000
2. Timber units for 1942 (M board feet log scale)-----	32,000
3. Excess output (M board feet log scale)-----	12,000
4. Net income from timber block for 1942-----	\$320,000
5. Unit net income per M board feet log scale for 1942 (item 4 divided by item 2)-----	\$10
6. Nontaxable income from exempt excess output computed pursuant to section 735(b) (3) (item 3 multiplied by one-half of item 5)-----	\$60,000

SEC. 35.735-4 NONTAXABLE BONUS INCOME.—The term “nontaxable bonus income” means the amount of the income derived from bonus payments made by any agency of the United State Government on account of the production in excess of certain specified quotas of a mineral product or of timber, if the exhaustion of the mineral property or the timber block from which such product or timber was recovered gives rise to an allowance for depletion under section 23(m). Such amount, however, shall not exceed the net income (computed with the allowance for depletion) attributable to the output in excess of the

quota. Such net income so attributable shall be an amount which bears the same ratio to the net income from the mineral property, computed as provided in section 35.735-2(i), or the net income from the timber block, computed as provided in section 35.735-2(l), as the output in excess of the quota bears to the total number of mineral units or timber units produced for the taxable year. If two or more metals, coal, or nonmetallic substances are contained in the minerals recovered from a mineral property, nontaxable bonus income must be determined with respect to each such metal, coal, or nonmetallic substance, and net income from the property must be allocated fairly between each type of metal, coal, or nonmetallic substance. In the case of any such bonus paid with respect to any such type of metal, coal, or nonmetallic substance the nontaxable bonus income shall not exceed the net income attributable to the output in excess of the specified quota of such type. Such net income shall be an amount which bears the same ratio to the net income attributable to such type of metal, coal, or nonmetallic substance as the output in excess of the quota established for such type bears to the number of mineral units of such type produced for the taxable year.

The provisions of this section may be illustrated by the following example:

Example. Corporation C, which is on the calendar year basis, owns a mineral property from which is extracted copper ore. For each of the four years in the base period, it extracted 200 tons of ore a day, or 73,000 tons per year; the ore assayed 60 pounds of copper to the ton. The annual base period output of copper was 4,380,000 pounds, and the price received by Corporation C per ton of ore was \$7.20. Gross income for each base period year was therefore \$525,600. Allowable deductions, including the smelter charges but exclusive of percentage depletion, amounted to \$385,000. Net income from the mineral property, without regard to the allowance for depletion, was \$140,600. Percentage depletion for each such year amounted to \$70,300 (15 percent of \$525,600 but not in excess of 50 percent of \$140,600). For 1942, Corporation C recovered 110,000 tons of ore, which assayed 50 pounds of copper to the ton, from the mineral property. The 1942 output of copper was therefore 5,500,000 pounds. The ceiling price established by the War Production Board and the Office of Price Administration for copper was \$0.12 per pound. With respect to Corporation C, a 1942 quota of 4,000,000 pounds of copper was established and a bonus of \$0.05 per pound was paid for above-quota production. Gross income received by Corporation C for 1942 was \$735,000 and included a bonus payment of \$75,000 (1,500,000 times \$0.05). Allowable deductions, including the smelter charges but exclusive of percentage depletion, amounted to \$579,700. Net income from the property, without

regard to the allowance for depletion, was \$155,300. Percentage depletion amounted to \$77,650 (15 percent of \$735,000 but not in excess of 50 percent of \$155,300). As of December 31, 1942, it was estimated that 35,000,000 pounds of copper remained in the minerals in the mineral property. Since the excess output for 1942 did not exceed 5 percent of the estimated recoverable units for 1942, nontaxable income from exempt excess output is not authorized by section 735(b) (1). The amount of nontaxable bonus income for 1942 is \$21,177, computed as follows:

1. Normal output (pounds) (17,520,000 divided by 4)-----	4,380,000
2. Output for 1942 (pounds)-----	5,500,000
3. Excess output for 1942 (pounds) (item 2 minus item 1)-----	1,120,000
4. Estimated recoverable units for 1942 (pounds) (35,000,000 plus item 3)-----	36,120,000
5. Percentage which item 3 is of item 4 (percent)-----	3.1
6. Gross income for 1942 from the mineral property-----	\$735,000
7. Allowable deductions (excluding depletion)-----	579,700
8. Net income from the mineral property (excluding depletion)---	155,300
9. Less percentage depletion-----	77,650
10. Net income for 1942 from the mineral property-----	77,650
11. Unit net income for 1942 (item 10 divided by item 2)-----	\$0.014118
12. Quota for 1942 (pounds)-----	4,000,000
13. Above-quota production for 1942 (pounds) (item 2 minus item 12)-----	1,500,000
14. Net income attributable to above-quota production (item 13 times item 11)-----	\$21,177
15. Bonus payments received-----	\$75,000
16. Nontaxable bonus income (item 14 or item 15, whichever is the lesser)-----	\$21,177

If income attributable to a strategic mineral as defined in section 731 is exempt from excess profits tax pursuant to the provisions of such section, nontaxable bonus income attributable to such strategic mineral shall not be computed for the purposes of section 735(c) or of section 711(a) (1) (I) or section 711(a) (2) (K). The portion of gross income and allowable deductions attributable to such strategic mineral shall be excluded from the net income from the mineral property in determining the net income attributable to other metals or non-metallic substances in the minerals recovered from such mineral property for the base period and for the excess profits tax taxable year for which the benefits of section 735 are claimed.

SEC. 35.735-5 RULE IN CASE INCOME FROM EXCESS OUTPUT INCLUDES BONUS PAYMENT.—The nontaxable income attributable to exempt excess output pursuant to the provisions of section 735(b) (1), (2),

or (3) may include nontaxable bonus payments, as provided in section 735(c). In such case, the taxpayer may elect to compute its nontaxable income attributable to the output in excess of the established quota as nontaxable income from exempt excess output pursuant to the appropriate provision of section 735(b) and section 35.735-3 or as nontaxable bonus income pursuant to section 735(c) and section 35.735-4. Such election shall be made in the excess profits tax return filed prior to the last day prescribed by law for the filing of such return for the taxable year for which the benefits of section 735 are claimed. The last day prescribed by law for the filing of the return includes the last day of the period of any extension granted for such filing. The election provided in section 735(d) must be made for each excess profits tax taxable year for which income attributable to excess output includes bonus payments. An election made with respect to one excess profits tax taxable year to receive the benefits of nontaxable bonus income under section 735(c) does not preclude the taxpayer from electing for a subsequent year to receive the benefits of nontaxable income from exempt excess output under section 735(b), and vice versa. For any excess profits tax taxable year for which an election is made under section 735(d) and this section, such election shall be made by the taxpayer by attaching to its excess profits tax return a statement showing the method of computation and the amount of nontaxable income from exempt excess output under section 735(b) or of nontaxable bonus income under section 735(c), whichever the taxpayer elects to exclude under section 711(a)(1)(I) or section 711(a)(2)(K) in the computation of excess profits net income. An election made by the taxpayer pursuant to the provisions of section 30.735-5 of Regulations 109 shall be deemed to be made pursuant to the provisions of this section. If the taxpayer has failed so to elect or desires to change its election, such election or change in election may, subject to the approval of the Commissioner, be made in an amended return filed by the taxpayer within the period of limitations for the filing of claims for credit or refund.

The provisions of this section may be illustrated by the following example:

Example. Corporation P, which is on the calendar year basis, owns a mineral property from which is extracted minerals containing lead and silver. For each taxable year in the base period, 10,000 tons of ore, assaying 100 pounds of lead and 10 ounces of silver to the ton, were extracted from the mineral property. The output of lead for each base period year was 1,000,000 pounds; the output of silver was 100,000 ounces. Assume that the market price obtained by such corporation for lead for such period was \$0.05 per pound and that the market price obtained for silver was \$0.70 per ounce. The gross in-

come for each year in the base period was \$120,000, consisting of \$50,000 received for lead and \$70,000 for silver. Allowable deductions for each year, including the smelter charges but excluding the allowance for depletion, amounted to \$40,000. Of the amount of such deductions, \$16,666.67 represented the amount allocable to lead production ($\frac{50,000}{120,000}$ times \$40,000) and \$23,333.33 represented the amount

allocable to silver production ($\frac{70,000}{120,000}$ times \$40,000). The net income

from the mineral property (computed without the allowance for depletion) was \$33,333.33 attributable to lead, and \$46,666.67 attributable to silver. The allowance for percentage depletion computed with respect to lead mining was \$7,500 (15 percent of \$50,000 but not in excess of 50 percent of \$33,333.33); the allowance for such depletion computed with respect to silver mining was \$10,500 (15 percent of \$70,000 but not in excess of 50 percent of \$46,666.67). In 1942, 20,000 tons of ore were extracted from the mineral property. The quality of the ore had deteriorated so that it assayed 80 pounds of lead and 8 ounces of silver to the ton. For 1942, therefore, the total output of lead was 1,600,000 pounds, and the total output of silver was 160,000 ounces. The ceiling price of lead was \$0.06½ per pound; a quota of 900,000 pounds of lead was established by the War Production Board and the Office of Price Administration with respect to the taxpayer and a bonus of \$0.02¾ per pound was paid to the taxpayer with respect to production in excess of such quota. The price of silver obtained by taxpayer was \$0.70 per ounce. The gross income for 1942 was \$235,250 consisting of \$123,250 attributable to lead and \$112,000 attributable to silver. The bonus payments received by the taxpayer with respect to above-quota production of lead, included in gross income attributed to lead, amounted to \$19,250 (700,000 pounds of lead times \$0.02¾ per pound). Allowable deductions for the year, including the smelter charges but excluding the allowance for depletion, amounted to \$80,000. Of the amount of such deductions, \$41,912.86

represented the amount allocable to lead production ($\frac{123,250}{235,250}$ times \$80,000) and \$38,087.14 represented the amount allocable to silver production

($\frac{112,000}{235,250}$ times \$80,000). The net income from the mineral property (computed without the allowance for depletion) was \$81,337.14 attributable to lead and \$73,912.86 attributable to silver. The allowance for percentage depletion computed with respect to lead mining was \$18,487.50 (15 percent of \$123,250 but not in excess of 50 percent of \$81,337.14); the allowance for such depletion computed with respect to silver mining was \$16,800 (15 percent of \$112,000 but

not in excess of 50 percent of \$73,912.86). It is estimated that as of December 31, 1942, there were 6,500,000 pounds of lead and 510,000 ounces of silver remaining in the mineral property. For 1942 the amount of nontaxable income from exempt excess output of lead was \$3,099.60, the amount of nontaxable bonus income from lead was \$19,250, and the amount of nontaxable income from exempt excess output of silver was \$6,510.06.

Since the amount of nontaxable bonus income with respect to the output of lead which exceeds the established quota and which also constitutes excess output, i. e., 600,000 pounds, was \$16,500 (item 33 in the following computation) and exceeded \$3,099.60 representing the nontaxable income from exempt excess output of lead, Corporation P elected under section 735(d) to exclude \$16,500 with respect to such 600,000 pounds in the computation of excess profits net income. With respect to the remaining portion of its output in excess of the established quota, i. e., 100,000 pounds, Corporation P excluded nontaxable bonus income of \$2,750 (item 34) in the computation of excess profits net income pursuant to section 735(c).

Computation

	Lead	Silver
1. Normal output:		
a. Lead (pounds) (4,000,000 divided by 4).....	1,000,000	-----
b. Silver (ounces) (400,000 divided by 4).....		100,000
2. Output for 1942.....	1,600,000	160,000
3. Excess output (item 2, minus item 1a or 1b).....	600,000	60,000
4. Estimated recoverable units as of December 31, 1942:		
a. Lead (pounds) (6,500,000 plus 600,000).....	7,100,000	-----
b. Silver (ounces) (510,000 plus 60,000).....		570,000
5. Percentage which item 3 is of item 4a or 4b (percent).....	8.45	10.53
6. Percentage of item 3 to be used in computing exempt excess output (percent).....	20	
7. Exempt excess output (item 3 times item 6).....	120,000	18,000
8. Normal unit profit (item 17).....	\$0.02583	\$0.36167
9. Nontaxable income from exempt excess output (item 7 times item 8) but not in excess of item 24.....	\$3,099.60	\$6,510.06
NORMAL UNIT PROFIT		
10. Gross income from the mineral property for each base period year.....	\$50,000.00	\$70,000.00
11. Allowable deductions (excluding allowance for depletion) for each base period year.....	16,666.67	23,333.33
12. Net income from the mineral property (excluding allowance for depletion) for each base period year.....	33,333.33	46,666.67
13. Allowance for percentage depletion.....	7,500.00	10,500.00
14. Net income from the mineral property for each base period year.....	25,833.33	36,166.67
15. Aggregate net income from the mineral property for the base period.....	103,333.32	144,666.68
16. Aggregate mineral units recovered during the base period.....	4,000,000	400,000
17. Normal unit profit (item 15 divided by item 16).....	\$0.02583	\$0.36167

Computation—Continued

	Lead	Silver
NET INCOME ATTRIBUTABLE TO EXCESS OUTPUT		
18. Gross income from the mineral for 1942.....	\$123,250.00	\$112,000.00
19. Allowable deductions (excluding allowance for depletion) for 1942.....	41,912.86	38,087.14
20. Net income from the mineral property (excluding allowance for depletion) for 1942.....	81,337.14	73,912.86
21. Allowance for percentage depletion.....	18,487.50	16,800.00
22. Net income from the mineral property for 1942.....	62,849.64	57,112.86
23. Unit net income for 1942 (item 22 divided by item 2).....	\$0.03928	\$0.35696
24. Net income attributable to excess output for 1942 (item 3 times item 23).....	23,568.00	21,417.60
NONTAXABLE BONUS INCOME		
		<i>Lead</i>
25. Quota established for 1942 (pounds).....		900,000
26. Total output for 1942 (pounds).....		1,600,000
27. Above-quota output (pounds).....		700,000
28. Bonus payments received (item 27 times \$0.0234).....		\$19,250
29. Net income attributable to above-quota output (item 27 times item 23).....		\$27,496
30. Nontaxable bonus income (item 28 or item 29, whichever is the lesser).....		\$19,250
COMPUTATION OF NONTAXABLE INCOME FROM EXEMPT EXCESS OUTPUT AND FROM BONUS PAYMENTS WITH RESPECT TO 1942 EXCESS OUTPUT IN EXCESS OF QUOTA		
31. Item 3 or item 27, whichever is the lesser.....		600,000
32. Nontaxable income from exempt excess output computed with respect to item 31 (item 9).....		\$3,099.60
33. Nontaxable bonus income computed with respect to item 31 (item 31 times \$0.0234).....		\$16,500.00
34. Nontaxable bonus income computed with respect to above-quota output in excess of 600,000 pounds, i. e., 100,000 times \$0.0234 (item 30 minus item 33).....		\$2,750.00

SEC. 736. RELIEF FOR INSTALLMENT BASIS TAXPAYERS AND TAXPAYERS WITH INCOME FROM LONG-TERM CONTRACTS.
[ADDED BY SEC. 222(d), REV. ACT 1942.]

(a) **ELECTION TO ACCRUE INCOME.**—In the case of any taxpayer computing income from installment sales under the method provided by section 44(a), if such taxpayer establishes, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that the average volume of credit extended to purchasers on the installment plan in the four taxable years preceding the first taxable year beginning after December 31, 1941, was more than 125 per centum of the volume of such credit extended to such purchasers in the taxable year, or the average outstanding installment accounts receivable at the end of each of the four taxable years preceding the first taxable year beginning after December 31, 1941, was more than 125 per centum of the amount of such accounts receivable at the end of the taxable year, or if the taxpayer was not in existence for four previous taxable years, the taxable years during which the taxpayer was in existence, in either case including only such years for which the income was computed under the method provided in section 44(a), it may elect, in its return for the taxable year, for the purposes of the tax imposed by this subchapter, to compute, in accordance with regulations prescribed by the

Commissioner with the approval of the Secretary, its income from installment sales on the basis of the taxable period for which such income is accrued, in lieu of the basis provided by section 44(a). Except as hereinafter provided, such election shall be irrevocable when once made and shall apply also to all subsequent taxable years, and the income from installment sales for each taxable year before the first year with respect to which the election is made but beginning after December 31, 1939, shall be adjusted for the purposes of this subchapter to conform to such election. In making such adjustments, no amount shall be included in computing excess profits net income for any excess profits tax taxable year on account of installment sales made in taxable years beginning before January 1, 1940. If the taxpayer establishes, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that in a taxable year subsequent to the year with respect to which an election has been made under the preceding provisions of this subsection it would not be eligible to elect such accrual method, the taxpayer may in accordance with such regulations elect in its return for such year to abandon such accrual method. Such election shall be irrevocable when once made and shall preclude any further elections under this subsection. For the taxable year for which the latter election is made and subsequent taxable years, income shall be computed in accordance with section 44(c).

SEC. 35.736(a)-1 TAXPAYERS REPORTING INCOME ON INSTALLMENT BASIS; ELIGIBILITY FOR RELIEF.—(a) *In general.*—Section 736(a) provides excess profits tax relief with respect to a taxpayer which computes its income for the taxable year from installment sales under the method provided by section 44(a), if such taxpayer establishes that either—

(1) the average volume of credit extended to purchasers on the installment plan in the four taxable years preceding the first taxable year of the taxpayer beginning after December 31, 1941, was more than 125 percent of the volume of such credit extended to such purchasers in the taxable year, or

(2) the average outstanding installment accounts receivable at the end of each of the four taxable years preceding the first taxable year of the taxpayer beginning after December 31, 1941, was more than 125 percent of the amount of such accounts receivable at the end of the taxable year.

If the taxpayer was not in existence for the four taxable years preceding its first taxable year beginning after December 31, 1941, the average volume of credit or the average outstanding installment accounts, as the case may be, for the years preceding such first taxable year shall be computed for such years as the taxpayer was in existence. The average volume of credit or the average outstanding installment accounts shall be computed only with respect to those years for which the income was computed pursuant to the method provided by section 44(a), and shall not be computed with respect to

any year for which the income was reported on the cash or the straight accrual basis. The years with respect to which such computations are made need not be consecutive taxable years.

The average volume of credit for the appropriate years preceding the taxpayer's first taxable year beginning after December 31, 1941 (hereinafter called the "installment base period"), shall be the aggregate of the volumes of credit extended during each of such years divided by the number of months in such years and multiplied by 12. If the taxable year with respect to which the election is being made is a year of less than 12 months, the number of months in such year shall be used for the purposes of the preceding sentence instead of 12. The average outstanding installment accounts receivable shall be the aggregate of the amounts of the installment accounts receivable at the end of each of the taxable years in the installment base period divided by the number of years in such period.

(b) *Definitions and determinations.*—For the purposes of this section:

(1) An installment sale means any sale upon credit which the purchaser agrees to repay in two or more scheduled payments, regardless of the maturity of such credit or the amount of the down payment or of each payment, and which for the purposes of the income tax under Chapter 1 is reported on the installment basis. An installment sale shall not include any casual sale of personal property, and shall not include any sale of real property unless the initial payments received in cash or property (other than evidences of indebtedness of the purchaser) during the taxable period in which the sale is made do not exceed 30 percent of the selling price and unless the taxpayer is regularly engaged in the business of selling real property upon such basis.

(2) The volume of credit for a taxable year is the amount equal to the difference between the amount of net sales (gross sales minus sales returns and allowances) and the amount of the down payments in cash or in other property (other than evidence of indebtedness of the purchaser). The sales price of an article shall include the amount of any service or credit charge but shall not include the amount of any sales tax or other excise tax imposed upon the sale whether or not charged to the purchaser. The down payment shall be the payment made at the time of the sale and shall not include the amount of any sales tax or other excise tax charged to the purchaser and included in the down payment.

(3) The outstanding accounts receivable at the end of a taxable year shall be the aggregate of the net debit amounts in the installment accounts receivable of the taxpayer at the end of such taxable year. Installment accounts receivable shall be the accounts reflecting

the amounts due the taxpayer from installment sales. In computing the net debit amount of such accounts for the installment base period there shall be allowed as credits not only payments, trade-ins, and returns and allowances but also the amount of installment accounts receivable which have been ascertained to be worthless and have been charged off under section 23(k) of the Revenue Act of 1938 and have been allowed as a deduction in computing the net income, or which have become worthless under section 23(k)(1) of the Internal Revenue Code and have been allowed as a deduction. With respect to the taxable year for which eligibility for relief under section 736(a) and this section is being determined, in addition to the credits for payments, trade-ins, and returns and allowances, there shall be allowed as a credit the amount of installment accounts receivable which have been determined to be worthless under section 23(k)(1) of the Internal Revenue Code and which have been allowed as a deduction in computing the net income for such year. In determining the amount of installment accounts receivable at the end of the taxable year for which eligibility for relief under section 736(a) is being determined, no credit shall be allowed based upon the sale, hypothecation, or other disposition (other than by payment by the purchaser) of any installment account receivable unless it is the practice of the taxpayer to sell, hypothecate, or make other disposition of a portion of its installment accounts receivable, and unless such sales, hypothecations, or other dispositions have been made in the installment base period. If such sales, hypothecations, or other dispositions have been made in such period, credits may be allowed in computing the amount of installment accounts receivable at the close of the taxable year for which eligibility is being determined. Such credit, however, shall not exceed an amount which bears the same ratio to the installment accounts receivable at the close of the taxable year which the total credit attributable to sales, hypothecations, or other dispositions (other than by payment by the purchaser) during the taxable years in the installment base period bears to the aggregate of the installment accounts receivable at the end of each of the taxable years in such period.

SEC. 35.736(a)-2 ELECTION TO COMPUTE EXCESS PROFITS INCOME ON STRAIGHT ACCRUAL BASIS.—If a taxpayer computing income from installment sales under the method provided by section 44(a) establishes eligibility for relief in accordance with the provisions of section 736(a) and section 35.736(a)-1, it may elect in its excess profits tax return for such year to compute income attributable to installment sales on the basis of the taxable period for which such income is accrued, in lieu of the basis provided by section 44(a), pursuant to which income for any taxable year is determined to be that propor-

tion of the installment payments actually received during the year which the gross profit realized or to be realized when payment is completed, bears to the total contract price.

A taxpayer electing to compute income from installment sales on the basis of the taxable period for which such income is accrued, pursuant to section 736(a) and this section, must file with its excess profits tax return for the year in which such election is made the following:

(a) A statement of the taxable years in the installment base period for which income from installment sales was reported for the purposes of the income tax under Chapter 1 under the method provided by section 44(a) and a statement that for the taxable year income from such sales is reported upon such basis for purposes of the income tax under Chapter 1.

(b) A schedule setting forth in columnar form the details of the computation of the volume of credit extended to purchasers on the installment plan in the taxable year and in each taxable year in the installment base period or of the amount of the outstanding installment accounts receivable at the end of the taxable year, and at the end of each taxable year in the installment base period, or both, and the computation of the ratio between such volume of credit extended in the taxable year and in the installment base period, or between such outstanding accounts receivable at the end of the taxable year and the average of such outstanding accounts for the installment base period, or both.

(c) A schedule setting forth the installment accounts receivable which have been sold, hypothecated, or otherwise disposed of during the taxable year and during the installment base period, and the ratio that such sales, hypothecations or other dispositions bear to installment accounts receivable outstanding at the close of the taxable year and at the end of each taxable year of the installment base period.

(d) Amended income and excess profits tax returns for each taxable year beginning after December 31, 1939, and prior to the taxable year for which the election is made, to reflect the effects of the computation of income from installment sales for the purposes of the excess profits tax for such years on the basis of the taxable period for which such income is accrued. If the recomputation produces an overassessment for any of such years, the taxpayer should file a claim for refund on Form 843 with the amended returns for such years.

An election made by the taxpayer pursuant to the provisions of section 30.736(a)-2 of Regulations 109 shall be deemed to be made pursuant to the provisions of this section.

If the taxpayer elects under the provisions of section 736(a) and this section to compute its income from installment sales on the straight accrual basis, such election shall be irrevocable when once made and shall apply also to all subsequent taxable years and the income from installment sales for each taxable year before the first year with respect to which the election is made, but beginning after December 31, 1939, shall be adjusted for the purposes of the excess profits tax computation to conform to such election. Since no change in the computation of income from the installment basis to the straight accrual basis can be made for any year beginning prior to January 1, 1940, as a result of such election, no recomputation can be made for any year in the base period. If the taxpayer uses the excess profits credit based on income pursuant to section 713 or section 742, the average base period net income shall be the actual average base period net income with income from installment sales computed under the method pursuant to which such income was reported for the purposes of the income tax under Chapter 1 for the taxable years in such period. If the taxpayer uses the excess profits credit based on invested capital pursuant to section 714, the determination of accumulated earnings and profits shall be made without regard to any adjustment resulting from election made under section 736(a) and this section, except as such election is reflected in the amount of income tax or excess profits tax payable for taxable years beginning after December 31, 1939. The election made pursuant to section 736(a) and this section to compute income on the straight accrual basis in lieu of the basis provided in section 44(a) shall apply only with respect to excess profits net income for purposes of the excess profits tax imposed by Subchapter E of Chapter 2. For purposes of the income tax under Chapter 1, or the surtax on personal holding companies or the declared value excess profits tax under Chapter 2, income shall be computed upon the basis provided in section 44(a).

If the taxpayer does not satisfy the eligibility requirements of section 736(a) and section 35.736(a)-1 for its first taxable year beginning after December 31, 1941, it is not precluded from electing for any subsequent taxable year in which it satisfies such eligibility requirements to compute its income from installment sales upon the straight accrual basis. Moreover, the taxpayer need not elect under section 736(a) and this section to compute its income from installment sales upon the straight accrual basis for the first taxable year beginning after December 31, 1941, with respect to which such eligibility requirements are satisfied. Failure so to elect does not preclude an election for a subsequent taxable year with respect to which the eligibility requirements are met.

For a new election to return to the installment basis of reporting income for a taxable year in which the taxpayer would not be eligible to elect to compute income from installment sales on the straight accrual basis pursuant to section 736(a) and this section subsequent to the year in which such election was made, see section 35.736(a)-4.

SEC. 35.736(a)-3 COMPUTATION OF INCOME ON STRAIGHT ACCRUAL BASIS.—If the taxpayer has elected under section 736(a) and section 35.736(a)-2 to compute for excess profits tax purposes its income from installment sales on the basis of the taxable year for which such income is accrued, in lieu of the basis provided by section 44(a), the gross income of the taxpayer from installment sales shall be computed upon such accrual basis. Likewise all deductions under section 23 allowable in computing net income and attributable to such sales, shall be computed upon the straight accrual basis. However, no income or deductions (including deductions for bad debts) shall be included in the computation of excess profits net income for any excess profits tax taxable year on account of installment sales made in taxable years beginning before January 1, 1940.

Any deductions under section 23 which are limited to a percentage of net income (computed without regard to such deductions, as for example, the deduction for charitable contributions which is allowed by section 23(q)) shall be determined on the basis of such net income with income from installment sales determined upon the straight accrual basis, and not on the basis of such net income for the purposes of the income tax under Chapter 1. The deduction for bad debts under section 23(k) shall be allowed only with respect to debts which have become worthless within the taxable year. No reserve for bad debts arising from installment accounts receivable may be set up for excess profits tax purposes, and no bad debt deduction shall be allowed for any additions to such a reserve. Only those debts which have become worthless within the taxable year and which are allowed as a deduction in the computation of net income for the purposes of the income tax under Chapter 1 for the taxable year shall be allowed in the determination of the bad debt deduction for excess profits tax purposes under section 736(a). If a debt reflected in installment accounts receivable was created in a prior excess profits tax taxable year for which the income for excess profits tax purposes was computed upon the straight accrual basis or was recomputed upon the straight accrual basis pursuant to an election made under section 736(a) and section 35.736(a)-2, and the total amount of the profit represented by such installment accounts receivable was included in gross income for such year, the amount of the deduction for the bad debt shall be computed upon the straight accrual basis and shall not be limited to the

unrecovered cost of the goods or article sold in consideration of such debt.

In computing the net operating loss deduction for the purposes of the excess profits tax for a taxable year pursuant to section 23(s), section 122, and section 711(a) (1) (J) or section 711(a) (2) (L) :

(a) the net operating loss under section 122(a) for any prior or subsequent taxable year and the net income under section 122(b) for any prior taxable year shall be determined by computing income from installment sales upon the straight accrual basis if for the purposes of the excess profits tax for such prior or subsequent years the income would be so computed upon the straight accrual basis pursuant to an election made under section 736(a) and section 35.736(a)-2;

(b) the net operating loss under section 122(a) for any subsequent taxable year shall be determined by computing income from installment sales upon the installment method provided by section 44(a) if for the purposes of the excess profits tax for such year income from installment sales would be so computed under the method provided by section 44(a) pursuant to an election made under section 736(a) to abandon the straight accrual method (see section 35.736(a)-4) ;

(c) the net operating loss for a taxable year beginning in 1939 shall be the net operating loss determined under the provisions of Chapter 1 applicable to such year, without regard to any election subsequently made under section 736(a) ;

(d) the excess profits net income for the taxable year in which the net operating loss deduction is computed shall, for the purposes of the reduction provided by section 711(a) (1) (J) (ii) or section 711(a) (2) (L) (ii) be determined by computing income from installment sales under the straight accrual basis pursuant to the election made under section 736(a) and section 35.736(a)-2.

In computing normal tax net income for the purposes of determining excess profits net income, the credit for dividends received shall be limited to 85 percent of the adjusted net income computed by placing income from installment sales on the straight accrual basis as provided in this section, instead of on the installment basis.

The unused excess profits credit under section 710(c) (2) for any excess profits tax taxable year for which the excess profits net income is computed by determining income from installment sales on the straight accrual basis pursuant to the election exercised under section 736(a) and section 35.736(a)-2 shall be computed with regard to the excess profits net income so computed. For any excess profits tax taxable year for which income from installment sales is computed under the method provided by section 44(a), pursuant to an

election under section 736(a) and section 35.736(a)-4 to abandon the straight accrual basis, the unused excess profits credit shall be computed with regard to the excess profits net income so computed. The adjusted excess profits net income used in the computation of the unused excess profits credit carry-back and carry-over under section 710(c) (3) shall be the adjusted excess profits net income computed by determining income from installment sales on the straight accrual basis as described in this section. The unused excess profits credit adjustment for any taxable year shall be the aggregate of the unused excess profits credit carry-overs and unused excess profits credit carry-backs to such taxable year, and shall be applied against excess profits net income for such year computed by determining income from installment sales on the straight accrual basis. However, no unused excess profits credit carry-back may be used against excess profits net income for an excess profits tax taxable year beginning prior to January 1, 1941, regardless of the fact that the excess profits net income for such year had been increased by income from installment sales computed on the straight accrual basis, whereas if such income had been computed on the installment basis the income from installment sales would be attributable to a subsequent taxable year to which an unused excess profits credit carry-back would be allowed. For the computation of the unused excess profits credit adjustment, see section 710(c) and section 35.710-4.

If an election is made under section 736(a) and section 35.736(a)-2 for an excess profits tax taxable year beginning after December 31, 1941, or for a subsequent taxable year, to compute excess profits net income on the straight accrual basis in lieu of the installment basis, the following rules shall apply with respect to a taxable year beginning after December 31, 1941: The normal tax and surtax determined under Chapter 1 shall be based upon normal tax net income and surtax net income which include income from installment sales computed under the method provided by section 44(a), and the excess profits tax shall be determined upon the basis of adjusted excess profits net income which shall include income from installment sales computed upon the straight accrual basis as described in this section. The normal tax net income and the corporation surtax net income for the purposes of the normal tax and surtax under Chapter 1 shall be determined by using as the credit under section 26(e) (relating to income subject to excess profits tax) the amount of adjusted excess profits net income computed by determining income from installment sales upon the straight accrual basis. For the purposes of determining the excess profits tax under section 710(a)(1)(B), as an amount which when added to the normal tax and surtax for such year equals 80 percent of the corporation surtax net income

computed without regard to the credit under section 26(e) the corporation surtax net income shall include income from installment sales computed upon the straight accrual basis described in this section, the credit for dividends received used in computing corporation surtax net income shall be limited to 85 percent of the net income which shall include income from installment sales computed upon such straight accrual basis, and the normal tax and surtax shall be the actual normal tax and surtax determined under Chapter 1.

For rules applicable to taxable years beginning in 1940 and 1941 where an election is made under section 736(a) and section 35.736(a)-2 for an excess profits tax taxable year beginning after December 31, 1941, or for a subsequent taxable year, to compute excess profits net income on the straight accrual basis in lieu of the installment basis, see section 30.736(a)-3 of Regulations 109.

The income tax and excess profits tax for any taxable year recomputed as provided in this section pursuant to the election under section 736(a) shall be the income tax and the excess profits tax for such year for the purposes of the provisions of Supplement L of Chapter 1, relating to assessment and collection of deficiency, the provisions of Supplement M of Chapter 1, relating to interest and additions to the tax, and the provisions of Supplement O of Chapter 1, relating to overpayments. Any amount of excess profits tax deferred under section 710(a) (5) on account of relief claimed under section 722, any amount of foreign tax credit under section 729 (c) and (d) which is limited to a portion of the excess profits tax imposed, any credit for debt retirement under section 783, and any amount of post war refund under section 780 shall be computed with respect to the excess profits tax so determined. Likewise, any amount of foreign tax credit under section 131 which is limited to a portion of the income tax imposed shall be computed with respect to the income tax so determined.

The provisions of this section may be illustrated by the following example:

Example. Corporation I, which came into existence early in 1936, is a retail dealer selling personal property on the installment plan. It computes its income on the calendar year basis under the method provided in section 44(a). It has established that the average outstanding installment accounts receivable at the end of the years 1938, 1939, 1940, and 1941 is more than 125 percent of the amount of outstanding installment accounts receivable at the end of 1942. It therefore elects under section 736(a) and section 35.736(a)-2 to compute its income from installment sales upon the straight accrual basis for purposes of the excess profits tax for the year 1942; income

from such sales for the years 1940 and 1941 must also be computed upon the straight accrual basis. The net income of Corporation I from installment sales computed upon the installment method and upon the straight accrual basis, the deductions (not including any deduction for excess profits tax) and the amount of income which will not be subject to excess profits tax as a result of the election under section 736(a) are shown in the following schedule:

Taxable year	Income accrued	Years in which income is realized by collection and reported upon the installment basis							Unrealized income Dec. 31, 1942
		1936	1937	1938	1939	1940	1941	1942	
1936	\$200,000	\$70,000	\$50,000	\$50,000	\$30,000				
1937	300,000		100,000	100,000	50,000	\$50,000			
1938	350,000			120,000	150,000	50,000	\$30,000		
1939	400,000				150,000	100,000	100,000	\$50,000	
1940	450,000					200,000	150,000	100,000	
1941	480,000						250,000	200,000	\$30,000
1942	540,000							500,000	40,000
Income	2,720,000	70,000	150,000	270,000	380,000	400,000	530,000	850,000	70,000
Deductions	530,000	50,000	60,000	65,000	75,000	90,000	90,000	100,000	
Net income	2,190,000	20,000	90,000	205,000	305,000	310,000	440,000	750,000	70,000

	1940	1941	1942	Unrealized income Dec. 31, 1942
Net income from installment sales for taxable years beginning after December 31, 1939, computed upon installment basis	\$400,000	\$530,000	\$850,000	\$70,000
Net income from installment sales for taxable years beginning after December 31, 1939, computed upon accrual basis	450,000	480,000	540,000	
Increase in excess profits net income caused by change to accrual basis	50,000			
Decrease in excess profits net income caused by change to accrual basis		50,000	310,000	70,000

Income subject to excess profits tax upon installment basis (sum of incomes for 1940, 1941, 1942, and income unrealized as of December 31, 1942) \$1,850,000

Income subject to excess profits tax upon accrual basis (sum of incomes for 1940, 1941, and 1942) 1,470,000

Income which is not subject to excess profits tax if election is made under section 736(a) to compute income from installment sales upon the accrual method 380,000

Assume, for the purpose of computing tax for 1942, that except for the credit for income subject to excess profits tax, there are no adjustments to net income shown in the preceding schedule in computing

normal tax net income, corporation surtax net income, or excess profits net income, and that dividends out of earnings and profits were distributed for each year in the base period equal to the amount of the net income for such year. The average base period net income pursuant to section 713 (d) and (f) for 1942 is \$305,000, i. e., one-half of the sum of \$205,000 (the income for 1938), \$305,000 (the income for 1939), and \$200,000 (one-half of the amount by which the aggregate of the incomes for 1938 and 1939 exceeds the aggregate of the incomes for 1936 and 1937), but not in excess of \$305,000. The excess profits credit based on income for such year is \$289,750 (95 percent of \$305,000). The income tax and excess profits tax computed for 1942 without regard to section 736(a) and pursuant to an election under section 736(a) would be as follows:

Income tax

Without regard to section 736(a)

1. Net income (installment basis).....	\$750,000
2. Less: Credit under section 26(e) for income subject to excess profits tax (item 16).....	455,250
3. Normal tax net income and corporation surtax net income.....	294,750
4. Normal tax (24 percent).....	70,740
5. Surtax (16 percent).....	47,160
6. Total tax.....	117,900

Pursuant to election under section 736(a)

7. Net income (installment basis).....	\$750,000
8. Less credit under section 26(e) for income subject to excess profits tax (item 21).....	145,250
9. Normal tax net income and corporation surtax net income.....	604,750
10. Normal tax (24 percent).....	145,140
11. Surtax (16 percent).....	98,760
12. Total tax.....	241,900

Excess profits tax

Without regard to section 736(a)

13. Excess profits net income (installment basis).....	\$750,000
14. Less: Excess profits credit.....	\$289,750
15. Specific exemption.....	5,000
	294,750
16. Adjusted excess profits net income.....	455,250
17. Excess profits tax (90 percent).....	409,725

Excess profits tax—Continued

Pursuant to election under section 736(a)

18. Excess profits net income (accrual basis)-----	\$440,000
19. Less: Excess profits credit-----	\$289,750
20. Specific exemption-----	5,000
	<u>294,750</u>
21. Adjusted excess profits net income-----	145,250
22. Excess profits tax (90 percent)-----	<u>130,725</u>
23. Corporation surtax net income (accrual basis (item 18))-----	<u>440,000</u>
24. 80 percent of item 23-----	352,000
25. Less income tax under Chapter 1 (item 12)-----	241,900
26. Item 24 less item 25-----	<u>110,100</u>
27. Excess profits tax (item 22 or item 26, whichever is the lesser)-----	<u>110,100</u>
Tax computed without regard to section 736(a):	
Income tax-----	117,900
Excess profits tax-----	409,725
Total-----	<u>527,625</u>
Tax computed pursuant to election under section 736(a):	
Income tax-----	241,900
Excess profits tax-----	110,100
Total-----	<u>352,000</u>
Tax saving resulting from election under section 736(a)-----	175,625

SEC. 35.736(a)-4 ELECTION TO ABANDON STRAIGHT ACCRUAL BASIS AND TO RETURN TO INSTALLMENT BASIS.—If the taxpayer establishes for any excess profits tax taxable year subsequent to the year in which it elected under the provisions of section 736(a) and section 35.736(a)-2 to compute for excess profits tax purposes income from installment sales on the straight accrual basis that—

(a) such election was based upon a comparison of the average volume of credit extended to purchasers on the installment plan in the installment base period with the volume of credit for such year, and that such average volume of credit extended in the installment base period is not more than 125 percent of the volume of credit extended to purchasers on the installment plan in the taxable year, or

(b) such election was based upon a comparison of the average outstanding accounts receivable for the installment base period with the amount of such accounts receivable at the end of such year, and that such average outstanding accounts receivable for

the installment base period is not more than 125 percent of the amount of such accounts receivable at the end of the taxable year, the taxpayer may elect in its excess profits tax return for the taxable year to abandon for excess profits tax purposes the computation of income from installment sales on the straight accrual basis and may elect under the method provided by section 44(a) to compute its income from installment sales as that proportion of installment payments actually received in the taxable year which the gross profit realized or to be realized when payment is completed, bears to the total contract price. When made, such election shall be irrevocable and shall be applicable not only to the taxable year for which the election is made but also to all subsequent excess profits tax taxable years. No such election may be made if subsequent to the year for which the taxpayer has elected under section 736(a) and section 35.736(a)-2 to compute its income from installment sales on the straight accrual basis, the taxpayer has received permission from the Commissioner under section 41 and the regulations thereunder to change its accounting method for purposes of the income tax under Chapter 1 to the straight accrual basis. An election made under section 736(a) and this section to abandon the straight accrual basis and to resume the installment basis method provided by section 44(a) precludes any further election under section 736(a) and section 35.736(a)-2, and no future election can be made to compute, for excess profits tax purposes, income from installment sales on the straight accrual basis. An election made by the taxpayer pursuant to the provisions of section 30.736(a)-4 of Regulations 109 shall be deemed to be made pursuant to the provisions of this section.

If the election under section 736(a) and this section is made to resume the installment method of computing income from installment sales, the income from such sales computed upon such basis shall be included in excess profits net income for the taxable year for which the election is made and for all subsequent excess profits tax taxable years. Such income shall be computed in accordance with section 44(c), and amounts received during any such year on account of sales or other disposition of property made in any prior year (whether the income for such prior year was computed on the installment or the straight accrual basis) shall not be excluded in the computation of excess profits net income.

In computing the net operating loss deduction pursuant to section 23(s), section 122, and section 711(a) (1) (J) or section 711(a) (2) (L) for the purposes of the excess profits tax for a taxable year for which income from installment sales is computed under the method provided by section 44(a) pursuant to an election under section 736(a) and this section to abandon the straight accrual basis:

(a) the net operating loss under section 122(a) and the net income under section 122(b) for any prior taxable year shall be determined by computing income from installment sales upon the basis, straight accrual basis or installment basis provided by section 44(a); used in computing excess profits net income for such year,

(b) the net operating loss for any subsequent taxable year shall be determined by computing income from installment sales upon the installment basis method provided in section 44(a),

(c) the excess profits net income for the taxable year for which the net operating loss deduction is computed shall, for the purposes of the reduction provided by section 711(a)(1)(J)(ii) or section 711(a)(2)(L)(ii), be determined by computing income from installment sales under the installment basis method provided by section 44(a).

The unused excess profits credit under section 710(c)(2) for any prior excess profits tax taxable year and the adjusted excess profits net income for any such year (used in the computation of the unused excess profits credit carry-over) shall be determined upon the basis of the excess profits net income for such year which shall include income from installment sales computed upon the basis, straight accrual basis or installment basis provided by section 44(a), used in computing excess profits net income for such year. The unused excess profits credit for a subsequent excess profits tax taxable year shall be determined upon the basis of the excess profits net income which shall include income from installment sales computed upon the installment method provided by section 44(a). The unused excess profits credit adjustment for any taxable year shall be the aggregate of the unused excess profits credit carry-overs and unused excess profits credit carry-backs to such year. For the computation of the unused excess profits credit adjustment, see section 710(c) and section 35.710-4.

With respect to those excess profits tax taxable years for which the taxpayer has resumed the computation of income from installment sales on the installment basis provided by section 44(a), normal tax net income and corporation surtax net income for the purposes of computing the excess profits tax shall, prior to any adjustments under section 711(a) and section 710(a)(1)(B), be the normal tax net income and the corporation surtax net income used in the computation of the normal tax and the surtax under Chapter 1.

[SEC. 736. RELIEF FOR INSTALLMENT BASIS TAXPAYERS AND
TAXPAYERS WITH INCOME FROM LONG-TERM CONTRACTS.
(ADDED BY SEC. 222(d), REV. ACT 1942.)]

* * * * *

(b) **ELECTION ON LONG-TERM CONTRACTS.**—In the case of any taxpayer computing income from contracts the performance of which requires

more than 12 months, if it is abnormal for the taxpayer to derive income of such class, or, if the taxpayer normally derives income of such class but the amount of such income of such class includible in the gross income of the taxable year is in excess of 125 per centum of the average amount of the gross income of the same class for the four previous taxable years, or, if the taxpayer was not in existence for four previous taxable years, the taxable years during which the taxpayer was in existence, it may elect, in its return for such taxable year for the purposes of this subchapter, or in the case of a taxable year the return for which was filed prior to the date of the enactment of the Revenue Act of 1942, within 6 months after the date of the enactment of such Act, to compute, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, such income upon the percentage of completion method of accounting. Such election shall be made in accordance with such regulations and shall be irrevocable when once made and shall apply to all other contracts, past, present, or future, the performance of which required or requires more than 12 months. The net income of the taxpayer for each year prior to that with respect to which the election is made shall be adjusted for the purposes of this subchapter, including the computation of excess profits net income in each taxable year of the base period under section 711(b), to conform to such election but for purposes of chapter 1, the tax imposed by this subchapter for any prior taxable year on account of the adjustment required by this subsection shall be considered a part of the tax imposed by this subchapter for the taxable year in which such income is, without regard to this subsection, includible in gross income. Income described in this subsection shall not be considered abnormal income under section 721.

SEC. 35.736(b)-1 TAXPAYERS WITH INCOME FROM LONG-TERM CONTRACTS; ELIGIBILITY FOR RELIEF.—Section 736(b) provides relief with respect to a taxpayer which computes, pursuant to section 42 and section 29.42-4(b) of Regulations 111 (or the corresponding provision of prior regulations), income from contracts the performance of which requires more than 12 months (hereinafter called “long-term contracts”) for the taxable year in which such contracts are finally completed and accepted (hereinafter called the “completed contract basis”), if such taxpayer establishes that either—

(a) it is abnormal for the taxpayer to derive income from such class of long-term contracts, or

(b) the taxpayer normally derives income from such class of long-term contracts, but the amount of such income of such class includible in the gross income of the taxpayer for the taxable year is in excess of 125 percent of the average amount of the gross income of the same class for the four previous taxable years, or if the taxpayer was not in existence for four previous taxable years, the taxable years during which the taxpayer was in existence (hereinafter called the “long-term contract base period”). In determining whether performance required a period of more than 12 months, only the period beginning with the commencement of the work and ending with its completion shall be taken

into account. If 12 months or less elapse between the beginning of the work and its completion, the contract is not a long-term contract even though more than 12 months may have elapsed between the execution of such contract and the completion of its performance.

The average amount of gross income from long-term contracts in the long-term contract base period of a taxpayer shall be the aggregate of the gross incomes from such long-term contracts for each year in such base period divided by the number of months in such period and multiplied by 12. If the taxable year for which the election under section 736(b) and section 35.736(b)-2 is made is a year of less than 12 months, the number of months in such year shall be used for the purposes of the preceding sentence instead of 12. For the definition of gross income see section 22(a).

SEC. 35.736(b)-2 ELECTION TO REPORT INCOME UPON PERCENTAGE OF COMPLETION BASIS.—If the taxpayer satisfies the eligibility requirements provided in section 736(b) and section 35.736(b)-1 with respect to a taxable year beginning after December 31, 1939, it may elect in its excess profits tax return for such year, or if the election is made for a taxable year the excess profits tax return for which was filed prior to October 21, 1942 (the date of enactment of the Revenue Act of 1942), it may elect not later than April 21, 1943 (six months after the date of enactment of the Revenue Act of 1942), to compute its income from long-term contracts upon the percentage of completion method of accounting under the provisions of section 29.42-4(a) of Regulations 111 or section 19.42-4(a) of Regulations 103 applicable to the taxable year for which the tax is being computed. An election made by the taxpayer pursuant to the provisions of section 30.736(b)(2) of Regulations 109 shall be deemed to be made pursuant to the provisions of this section.

If the election to compute income from long-term contracts upon the percentage of completion method of accounting is made in an excess profits tax return filed on or after October 21, 1942, the taxpayer shall file with its return for such year the following:

(a) A schedule setting forth in columnar form a comparison between the gross income from long-term contracts reported in the long-term contract base period and the gross income from long-term contracts which would be reported upon the completed contract basis for the taxable year, together with a statement of the percentage which the latter bears to the average of the former.

(b) A schedule showing the recomputation of the average base period net income and the excess profits net income for each year in the base period with income from long-term contracts computed upon the percentage of completion method of accounting. Included in this

schedule shall be an analysis of all long-term contracts entered into, the income from which has been reported in income tax returns for the purposes of Chapter 1 for the taxable years beginning with the first taxable year in the base period of the taxpayer and ending with the taxable year for which the election is made, and including all long-term contracts which in such year of election are in the process of completion. The schedule shall contain a statement of the percentage of completion of such contracts for all such years supported, if possible, by architect's certificates or, if such certificates are not obtainable for such prior years, by other competent evidence establishing the percentage of completion claimed for such years.

(c) Amended excess profits tax returns for each prior excess profits tax taxable year for which a recomputation is necessitated by reason of the election to recompute income from long-term contracts upon the percentage of completion method of accounting, and amended income tax returns if necessary to reflect the recomputation of excess profits tax for such prior year. If the recomputation has produced an overassessment for any of such years, the taxpayer should file a claim for refund on Form 843 with the amended returns for such years.

If the taxpayer desires to make the election under section 736(b) for an excess profits tax taxable year, the return for which was filed prior to October 21, 1942, such election shall be made by the taxpayer filing an amended excess profits tax return for such year and an amended income tax return for such year, if necessary to reflect the recomputation of the excess profits tax for the year, on or before April 21, 1943. The additional information set forth in the preceding paragraph shall also be filed with such returns.

If the taxpayer elects under the provisions of section 736(b) and this section to compute its excess profits net income from long-term contracts upon the percentage of completion method of accounting, such election shall be irrevocable when once made. The election shall apply to all other long-term contracts entered into by the taxpayer, whether completed in the past, or in the taxable year, or whether such contracts are partly performed and are to be completed in the future, and to contracts which may be entered into in the future as well as to contracts which have already been entered into by the taxpayer. The income for excess profits tax purposes for each taxable year prior to the year in which the election is made to compute excess profits net income from long-term contracts upon the percentage of completion method of accounting shall be adjusted to conform to such method. The excess profits net income under section 711(b) for each taxable year in the base period, for the purposes of computing the average base period net income under section 713 or section 742, shall also be adjusted so as to conform to such election and the income from long-term

contracts shall be computed upon the percentage of completion method of accounting. If the taxpayer uses the excess profits credit based upon invested capital pursuant to section 714, the determination of accumulated earnings and profits shall be made without regard to any adjustment resulting from any election made under section 736(b) or this section, except as such election is reflected in the amount of income tax or excess profits tax payable for taxable years beginning after December 31, 1939.

The election made pursuant to section 736(b) and this section to compute income from long-term contracts upon the percentage of completion method of accounting shall apply only with respect to average base period net income and to excess profits net income for an excess profits tax taxable year. For purposes of the income tax under Chapter 1, or the surtax on personal holding companies or the declared value excess profits tax under Chapter 2, income from such contracts shall be computed upon the completed contract basis.

If the taxpayer does not satisfy the eligibility requirements of section 736(b) and section 35.736(b)-1 for a taxable year beginning prior to January 1, 1943, it is not precluded from electing for any subsequent excess profits tax taxable year with respect to which it satisfies such eligibility requirements to compute its income from long-term contracts on the percentage of completion basis for the purposes of the excess profits tax. Moreover, the taxpayer need not elect under section 736(b) and this section to compute income from long-term contracts on the percentage of completion basis for the first excess profits tax taxable year with respect to which the eligibility requirements are satisfied. Failure so to elect does not preclude an election for a subsequent excess profits tax taxable year with respect to which the eligibility requirements are met.

SEC. 35.736(b)-3 COMPUTATION OF NET INCOME UPON PERCENTAGE OF COMPLETION METHOD OF ACCOUNTING.—(a) *Excess profits tax taxable year.*—If a taxpayer has elected under section 736(b) and section 35.736(b)-2 to compute for excess profits tax purposes its net income from long-term contracts upon the percentage of completion method of accounting, in lieu of the completed contract basis, gross income from such long-term contracts shall be reported for each excess profits tax taxable year upon the basis of percentage of completion of such contract in such year. There shall be deducted from such gross income for a taxable year all expenditures made during such year on account of the contract, account being taken of the material and supplies on hand at the beginning and end of the taxable year for use in connection with the work under the contract but not yet so applied. Any deductions under section 23 which are limited to a percentage of net income (computed without regard to

such deduction, as for example, the deduction for charitable contributions which is allowed by section 23(q)) shall, for excess profits tax purposes, be determined upon the basis of such net income with the income from long-term contracts computed upon the percentage of completion method of accounting, and not upon the basis of net income for Chapter 1 purposes. No reserve for bad debts arising from accounts receivable from long-term contracts may be set up for excess profits tax purposes unless a reserve has been established for income tax purposes.

In computing the net operating loss deduction for the purposes of the excess profits tax for a taxable year pursuant to section 23(s), section 122, and section 711(a)(1)(J) or section 711(a)(2)(L), the net operating loss under section 122(a) and the net income under section 122(b) for any taxable year prior or subsequent to the taxable year in which the election under section 736(b) and section 35.736(b)-2 is made shall be determined by computing income from long-term contracts upon the percentage of completion method of accounting. The excess profits net income for the taxable year for which the net operating loss deduction is computed shall, for the purposes of the reduction provided by section 711(a)(1)(J)(ii) or section 711(a)(2)(L)(ii), be determined by computing income from long-term contracts upon the percentage of completion method of accounting.

In computing normal tax net income for the purposes of determining excess profits net income, the credit for dividends received shall be limited to 85 percent of the adjusted net income computed by determining income from long-term contracts upon the percentage of completion method of accounting as provided in section 736(b) and this section, instead of upon the completed contract basis.

The excess profits tax may be computed under section 710(a)(1)(B) as an amount which when added to the normal tax and surtax computed under Chapter 1 equals 80 percent of the corporation surtax net income computed without regard to the credit under section 26(e) (relating to income subject to excess profits tax). For such purpose, the corporation surtax net income shall be determined by computing the income from long-term contracts upon the percentage of completion method of accounting. The credit for dividends received used in computing corporation surtax net income shall be limited to 85 percent of the net income determined by computing income from long-term contracts upon the percentage of completion method of accounting, and the normal tax and surtax shall be the actual normal tax and surtax determined under Chapter 1.

The unused excess profits credit under section 710(c)(2) for any excess profits tax taxable year for which the excess profits net income is determined by computing income from long-term contracts upon

the percentage of completion method of accounting pursuant to the election exercised under section 736(b) and section 35.736(b)-2 shall be computed with regard to the excess profits net income so computed. The adjusted excess profits net income used in the computation of the unused excess profits credit carry-back and carry-over under section 710(c)(3) shall be the adjusted excess profits net income determined by computing income from long-term contracts upon the percentage of completion method of accounting as described in this section. The unused excess profits credit adjustment for any taxable year shall be the aggregate of the unused excess profits credit carry-overs and unused excess profits credit carry-backs to such taxable year, and shall be applied against excess profits net income for such year determined by computing income from long-term contracts upon the percentage of completion method of accounting. However, no unused excess profits credit carry-back may be used against excess profits net income for an excess profits tax taxable year beginning prior to January 1, 1941, regardless of the fact that the excess profits net income for such year has been increased by income from long-term contracts computed upon the percentage of completion method of accounting, whereas if such income had been computed upon the completed contract basis it would be attributable to a subsequent taxable year to which an unused excess profits credit carry-back would be allowed. For the computation of the unused excess profits credit adjustment, see section 710(c) and section 35.710-4.

The excess profits tax for a taxable year recomputed as provided in this section shall be the excess profits tax for such year for the purposes of the provisions of Supplement L of Chapter 1, relating to assessment and collection of deficiency, the provisions of Supplement M of Chapter 1, relating to interest and additions to tax, and the provisions of Supplement O of Chapter 1, relating to overpayments. Any amount of excess profits tax deferred under section 710(a)(5) on account of relief claimed under section 722, any amount of foreign tax credit under section 729 (c) and (d) which is limited to a portion of the excess profits tax imposed, any credit for debt retirement under section 783, and any amount of post-war refund under section 780 shall be computed with respect to the excess profits tax so determined.

In no event shall income from long-term contracts computed for excess profits tax purposes upon the percentage of completion method of accounting pursuant to an election under section 736(b) and section 35.736(b)-2 be considered abnormal income under section 721.

(b) *Taxable year in the base period.*—If a taxpayer elects, pursuant to section 736(b) and section 35.736(b)-2, to compute its income from long-term contracts upon the percentage of completion method of accounting, the excess profits net income for a taxable year

in the base period to be used in computing the average base period net income shall be computed pursuant to section 711(b) but with income from long-term contracts computed upon the percentage of completion method of accounting as described in section 35.736 (b)-3 in lieu of the completed contract basis method. In such event gross income attributable to each long-term contract shall be placed in the appropriate year in the base period upon the percentage of completion method of accounting, regardless of whether such contract was completed in a subsequent year in the base period or in an excess profits tax taxable year and regardless of when gross income from such contract was reported for income tax purposes under Chapter 1. Likewise, gross income attributable to each long-term contract completed during a taxable year in the base period shall be included in income for such year only to the extent to which such income is attributable to the percentage of the contract completed in such year. Gross income attributable to the percentage of the contract completed prior to the base period shall be excluded in the computation of excess profits net income for a taxable year in the base period and consequently from average base period net income. There shall be deducted from such gross income for each taxable year in the base period all expenditures made during the taxable year on account of the contract, account being taken of the material and supplies on hand at the beginning and end of each year for use in connection with the work under the contract but not yet so applied.

(c) *Adjustment of income tax liability.*—For purposes of the normal tax and surtax and of the surtax on corporations improperly accumulating surplus imposed by Chapter 1, the excess profits tax imposed by Subchapter E of Chapter 2 for any taxable year on account of the adjustment in excess profits tax for such year required by the recomputation of income from long-term contracts upon the percentage of completion method of accounting pursuant to the election under section 736(b), shall be considered a part of the excess profits tax imposed by Subchapter E of Chapter 2 for the taxable year in which such income is, without regard to the provisions of section 736(b), includible in gross income.

The excess profits tax imposed by Subchapter E of Chapter 2 for any excess profits tax taxable year on account of the recomputation of income from long-term contracts required by section 736(b) shall be the amount by which the excess profits tax imposed for such year with the income from long-term contracts computed upon the percentage of completion method of accounting exceeds the excess profits tax imposed for such year computed upon the completed contract basis method of accounting. The amount of such increase in excess profits tax which is attributable to the inclusion in excess profits net income

for such year of income from long-term contracts computed upon the percentage of completion method of accounting shall be added to the excess profits tax imposed for the year in which the income from such long-term contracts would be includible in gross income under the completed contract basis method of accounting. The amount of such increase shall be the increase prior to the inclusion in the excess profits tax for the taxable year in which the increase is determined of any increase in a prior taxable year attributable to a contract the gross income from which would be reported upon the completed contract basis for the year for which the increase is determined. If an increase in excess profits tax for a taxable year is due to income attributable to two or more contracts which are not completed in such year but the income from which is included in excess profits net income for such year upon the percentage of completion method of accounting, the portion of such increase attributable to each contract shall be the same proportion of the total increase for such year which the income attributable to such contract for such year is of the total income from such contracts for such year. The amount of income computed upon the percentage of completion method of accounting which is attributable to a contract in any taxable year shall be the gross income (so computed) minus the direct cost for such year on account of such contract, but shall not include any deductions, expenses, or costs which are not directly charged to such contract under the method of cost accounting employed by the taxpayer. The increase in excess profits tax so attributed to each contract shall be considered to be a part of the excess profits tax for the taxable year in which such contract is completed and in which the income would be reported under the completed contract basis method of accounting.

For the purposes of the credit under section 26(e) for income subject to excess profits tax, the excess profits tax for any taxable year for which an increase in tax is considered to be part of the tax for a subsequent taxable year shall be deemed to be the excess profits tax computed for such year upon the completed contract basis method of accounting, increased by any increase in excess profits tax for a prior taxable year due to income from long-term contracts being computed upon the percentage of completion method of accounting if the income from such contracts would have been reported for the taxable year upon the completed contract basis.

If the excess profits tax imposed for an excess profits tax taxable year recomputed pursuant to the election under section 736(b) is less than the excess profits tax imposed for such prior year computed without regard to the election under section 736(b), there is no amount of excess profits tax attributable to any contract which is to be completed in a future year and the income from which, computed upon

the completed contract basis, would be included in gross income for such future year. Consequently no adjustment in the excess profits tax for such future year is to be made. With respect to the taxable year for which the excess profits tax recomputed pursuant to the election under section 736(b) is less than the excess profits tax computed without regard to such election, the excess profits tax for the purposes of Chapter 1 shall be the excess profits tax computed pursuant to the election under section 736(b) increased by any increase in excess profits tax for a prior taxable year due to income from long-term contracts being computed upon the percentage of completion method of accounting if the income from such contracts would have been reported for the taxable year upon the completed contract basis.

The excess profits tax imposed by Subchapter E of Chapter 2 for any taxable year shall be the tax prior to the tax deferment under section 710(a)(5), prior to the credit for foreign taxes under section 729(c) and (d), prior to the credit for debt retirement under section 783, and prior to the adjustment under section 734 in case of position inconsistent with prior income tax liability. The recomputation pursuant to the election under section 736(b) of excess profits tax imposed for any taxable year involves not only a recomputation of the excess profits net income for such taxable year by placing income from long-term contracts upon the percentage of completion method of accounting, but also a recomputation of the average base period net income upon such accounting method, if the excess profits credit based on income pursuant to section 713 is used.

If income from long-term contracts is computed upon the percentage of completion method of accounting pursuant to the election under section 736(b), the following rules are applicable in determining, for the purposes of Chapter 1, the excess profits tax, and the method of utilizing such tax, for a taxable year in which income from such contracts would be reported upon the completed contract basis:

(i) There is allowed as a credit by section 26(e) in computing normal tax net income and surtax net income, the amount of income subject to excess profits tax. If the excess profits tax is computed pursuant to an election under section 736(b), such income is the amount of which the excess profits tax computed under section 710(a)(1)(A) is 90 percent. For purposes of the credit provided by section 26(e), the amount of excess profits tax so computed is considered to include the increase in excess profits tax imposed for a year beginning prior to January 1, 1942, and attributable to a contract which is completed, and the income from which would be reported on the completed contract basis, in a taxable year beginning after December 31, 1941.

Consequently, the excess profits tax for a year beginning in 1942 would be deemed to include any increase in excess profits tax for a taxable year beginning in 1940 or 1941 and attributable to a contract ending in 1942.

(ii) In the case of the surtax on corporations improperly accumulating surplus, the credit under section 26(e) for income subject to excess profits tax shall be deducted in determining section 102 net income for such year pursuant to section 102(d)(1)(D).

For rules applicable to taxable years beginning in 1940 and 1941 where an election is made under section 736(b) and section 35.736(b)-2 for an excess profits tax taxable year beginning after December 31, 1941, or for a subsequent taxable year, to compute income from long-term contracts upon the percentage of completion method of accounting, see section 30.736(b)-3 of Regulations 109.

The income tax for a taxable year recomputed as provided in this section shall be the income tax for such year for the purposes of the provisions of Supplement L of Chapter 1, relating to assessment and collection of deficiency, the provision of Supplement M of Chapter 1, relating to interest and additions to tax, and the provisions of Supplement O of Chapter 1, relating to overpayments. Any amount of foreign tax credit under section 131 which is limited to a portion of the income tax imposed shall be computed with respect to the income tax so determined.

The provisions of this section may be illustrated by the following example:

Example. Corporation C, which came into existence early in 1935, is a contractor deriving all its income from the performance of long-term contracts requiring more than 12 months to complete. It computes its income for income tax purposes on the calendar year basis under the provisions of section 42 and section 29.42-4(b) of Regulations 111 or section 19.42-4(b) of Regulations 103. It has established that gross income from long-term contracts completed in 1942 is in excess of 125 percent of the average amount of gross income from such contracts in 1938, 1939, 1940, and 1941. It therefore elects under section 736(b) and section 35.736(b)-2 to compute its income from long-term contracts upon the percentage of completion method of accounting. Income from such contracts must be computed upon the percentage of completion method of accounting for the excess profits tax taxable years 1940, 1941, 1942, and subsequent years and also for the base period years 1936, 1937, 1938, and 1939. The net income of Corporation C from long-term contracts computed upon the percentage of completion method of accounting and upon the completed contract basis method of accounting, and the deductions

(not including any deduction based upon excess profits tax) are shown in the following schedule:

	1935	1936	1937	1938	1939	1940	1941	1942
Income from contracts upon completed contract basis (gross income minus expenditures).....		\$50,000	\$150,000		\$110,000	\$200,000	\$220,000	\$250,000
Other deductions (not including excess profits tax or credit for income subject to excess profits tax).....	\$7,000	8,000	8,000	\$10,000	11,000	12,000	15,000	11,000
Net income upon completed contract basis.....	(7,000)	42,000	142,000	(10,000)	99,000	188,000	205,000	239,000
Income from contracts upon percentage of completion method (gross income minus expenditures):								
Contract A.....	30,000	20,000						
Contract B.....	40,000	60,000	50,000					
Contract C.....			30,000	40,000	40,000			
Contract D.....				70,000	80,000	50,000		
Contract E.....					10,000	90,000	40,000	
Contract F.....						25,000	55,000	
Contract G.....							150,000	100,000
Contract H ¹							70,000	60,000
Total.....	70,000	80,000	80,000	110,000	130,000	165,000	315,000	150,000
Other deductions (not including excess profits tax or credit for income subject to excess profits tax).....	7,000	8,000	8,000	10,000	11,000	12,000	15,000	11,000
Net income upon percentage of completion method.....	63,000	72,000	72,000	100,000	119,000	153,000	300,000	139,000

¹ Incomplete December 31, 1942.

Assume, for the purpose of computing tax for 1942, that except for the credit for income subject to excess profits tax, there are no adjustments to net income shown in the preceding schedule in computing normal tax net income, corporation surtax net income, or excess profits net income, and that dividends out of earnings and profits were distributed for each year in the base period equal to the amount of the net income computed upon the completed contract basis for such year. The average base period net income computed upon the completed contract basis is determined under section 713 (d) and (e), since the income for the last half of the base period does not exceed the income for the first half. The average base period net income upon which is based the excess profits credit based on income for 1942 is \$88,437.50, i. e., the aggregate of the incomes for 1936, 1937, and 1939 plus \$70,750, assumed to be the excess profits

net income for 1938 under section 713(e)(1) (75 percent of the average of the incomes for 1936, 1937, and 1939) divided by 4. The excess profits credit based on income for 1942 is \$84,015.63 (95 percent of \$88,437.50). The average base period net income computed upon the percentage of completion method of accounting is determined under section 713 (d) and (f), since the income for the last half of the base period exceeds the income for the first half. The average base period net income for 1942 is \$119,000, i. e., one-half of the sum of \$100,000 (the income for 1938), \$119,000 (the income for 1939), and \$37,500 (one-half of the amount by which the aggregate of the incomes for 1938 and 1939 exceeds the aggregate of the incomes for 1936 and 1937) but not in excess of \$119,000. The excess profits credit based on income for such year is \$113,050 (95 percent of \$119,000). The income and excess profits tax computed for 1942 without regard to section 736(b) and pursuant to an election under section 736(b) is as follows:

Income tax

Without regard to section 736(b)

1. Net income (completed contract basis)-----	\$239,000.00
2. Less credit under section 26(e) for income subject to excess profits tax (item 12)-----	149,984.37
3. Normal tax net income and corporation surtax net income----	89,015.63
4. Normal tax and surtax (40 percent)-----	35,606.25

Pursuant to election under section 736(b)

5. Net income (completed contract basis)-----	\$239,000.00
6. Less credit under section 26(e) for income subject to excess profits tax (item 20)-----	39,572.16
7. Normal tax net income and corporation surtax net income----	199,427.84
8. Normal tax and surtax (40 percent)-----	79,771.14

Excess profits tax

Without regard to section 736(b)

9. Excess profits net income (completed contract basis)-----	\$239,000.00
10. Less: Excess profits credit-----	\$84,015.63
11. Specific exemption-----	5,000.00
	89,015.63
12. Adjusted excess profits net income-----	149,984.37
13. Excess profits tax (90 percent)-----	134,985.93

Excess profits tax—Continued

Pursuant to election under section 736(b)

14. Excess profits net income (percentage of completion method)---	\$139,000.00
15. Less: Excess profits credit-----	\$113,050
16. Specific exemption-----	5,000
	<u>118,050.00</u>
17. Adjusted excess profits net income-----	20,950.00
18. Excess profits tax (90 percent)-----	<u>18,855.00</u>
19. Excess profits tax upon which is based credit under section 26(e) for 1942 income tax purposes (item 18 plus \$16,759.94, portion of increase in 1941 excess profits tax attributable to contract G completed in 1942 ¹)-----	<u>35,614.94</u>
20. Credit under section 26(e) for income subject to excess profits tax for 1942 income tax purposes (amount of which \$35,614.94 (item 19) is 90 percent)-----	39,572.16

Without regard to section 736(b)

(i) Excess profits net income (completed contract basis)-----	\$205,000.00
(ii) Less: Excess profits credit-----	\$67,212.50
(iii) Specific exemption-----	5,000.00
	<u>72,212.50</u>
(iv) Adjusted excess profits net income-----	132,787.50
(v) Excess profits tax (\$41,500 plus 50 percent of \$32,787.50)-----	<u>57,893.75</u>

Pursuant to election under section 736(b)

(vi) Excess profits net income percentage of completion method)-----	\$300,000.00
(vii) Less: Excess profits credit-----	\$113,050
(viii) Specific exemption-----	5,000
	<u>118,050.00</u>
(ix) Adjusted excess profits net income-----	181,950.00
(x) Excess profits tax (\$41,500 plus 50 percent of \$81,950)-----	<u>82,475.00</u>
(xi) Increase in excess profits tax due to election under section 736(b) (item (x) minus item (v))-----	<u>24,581.25</u>
(xii) Portion of increase attributable to contract G completed in 1942 ($\frac{150,000}{220,000}$ of \$24,581.25)-----	<u>16,759.94</u>

¹This amount is derived from the following computations of excess profits tax for 1941 under the law applicable to 1941. For complete computations of the income and excess profits taxes for 1940 and 1941 both without regard to section 736(b) and pursuant to election under section 736(b), in the case of the above example, see the example in section 30.736(b)-3(c) of Regulations 109.

Excess profits tax—Continued

Pursuant to election under section 736(b)—Continued

Tax computed without regard to section 736(b):

Income tax-----	\$35,606.25
Excess profits tax-----	134,935.93
Total-----	<u>170,592.18</u>

Tax computed pursuant to election under section 736(b)

Income tax-----	79,771.14
Excess profits tax-----	18,855.00
Total-----	<u>98,626.14</u>

Tax saving resulting from election under section 736(b)-----	71,966.04
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[SEC. 736. RELIEF FOR INSTALLMENT BASIS TAXPAYERS AND
TAXPAYERS WITH INCOME FROM LONG-TERM CONTRACTS.
(ADDED BY SEC. 222(d), REV. ACT 1942.)]

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(c) ADJUSTMENT ON ACCOUNT OF CHANGE.—If an adjustment specified in subsection (a) or subsection (b), as the case may be, is, with respect to any taxable year, prevented, on the date of the election by the taxpayer under subsection (a) or subsection (b), as the case may be, or, within two years from such date, by any provision or rule of law (other than this section and other than section 3761, relating to compromises), such adjustment shall nevertheless be made if in respect of the taxable year for which adjustment is sought a notice of deficiency is mailed or a claim for refund is filed, as the case may be, within two years after the date such election is made. If at the time of the mailing of such notice of deficiency or the filing of such claim for refund, the adjustment is so prevented, then the amount of the adjustment authorized by this subsection shall be limited to the increase or decrease in the tax imposed by Chapter 1 and this subchapter previously determined for such taxable year which results solely from the effect of subsection (a), or subsection (b), as the case may be, and such amount shall be assessed and collected, or credited or refunded, in the same manner as if it were a deficiency or an overpayment, as the case may be, for such taxable year and as if on the date of such election, two years remain before the expiration of the period of limitation upon assessment or the filing of claim for refund for the taxable year. The tax previously determined shall be ascertained in accordance with section 734(d). The amount to be assessed and collected under this subsection in the same manner as if it were a deficiency or to be refunded or credited in the same manner as if it were an overpayment, shall not be diminished by any credit or set-off based upon any item, inclusion, deduction, credit, exemption, gain or loss, other than one resulting from the effect of subsection (a) or subsection (b), as the case may be. Such amount, if paid, shall not be recovered by a claim or suit for refund, or suit for erroneous refund based upon any item, inclusion, deduction, credit, exemption, gain or loss, other than one resulting from the effect of subsection (a) or subsection (b), as the case may be.

SEC. 35.736(c)-1 ADJUSTMENT ON ACCOUNT OF CHANGE ARISING FROM ELECTION UNDER SECTION 736(a) OR SECTION 736(b).—The re-

computation of the tax liability authorized by section 736(c) applies to the income tax and to the surtax on corporations improperly accumulating surplus, imposed by Chapter 1, and to the excess profits tax imposed by Subchapter E of Chapter 2. Under section 736(c), if the adjustment of any of such taxes imposed for any taxable year, to give effect to the recomputations provided under section 736(a) (in the case of an installment basis taxpayer) or under section 736(b) (in the case of a taxpayer with long-term contracts), is prevented on the date of the election by the taxpayer under section 736(a) or section 736(b), as the case may be, or within two years from such date by any provision of law (other than section 736 and other than section 8761, relating to compromises) or by any rule of law, including the doctrine of *res adjudicata*, an adjustment shall nevertheless be made if with respect to the taxable year for which such adjustment is sought a notice of deficiency is mailed or a claim for refund is filed, as the case may be, within two years after the date such election was made. Section 736(c) applies only if at the time of filing of a claim for refund or the mailing of the notice of the deficiency the adjustment would otherwise be prevented by the running of the statute of limitations, by the execution of a closing agreement, by the operation of the rule of *res adjudicata*, or because of other reasons. For reference to provisions which would prevent adjustment except for the provisions of section 736(c), see section 29.3801(b)-0 of Regulations 111. Section 736(c) is not applicable if, on the date of the filing of the claim for refund or the mailing of the notice of deficiency, adjustment of the tax liability is permissible without recourse to such section.

The amount of the adjustment authorized by section 736 is limited to the increase or decrease in the tax imposed by Chapter 1 or the tax imposed by Subchapter E of Chapter 2 previously determined for the taxable year which results solely from the revision of the excess profits tax liability effectuated by section 736(a) or section 736(b), as the case may be, and the collateral effects of such revision upon items of income, deductions, credits, average base period net income, etc., already taken into account in ascertaining the tax previously determined. The tax previously determined shall be ascertained in accordance with section 734(d). See section 35.734-4. If the amount of the adjustment determined under section 736(c) represents an increase in tax, it is to be treated in the same manner, and assessed and collected as if it were a deficiency for the taxable year; if the amount of the adjustment represents a decrease in tax, it is to be treated, credited, or refunded, in the same manner as if it were an overpayment for the taxable year. In either case the increase or decrease shall be treated as if on the date of the election pursuant to section 736(a) or section 736(b), as the case may be, two years remain before the expiration of the period of limitation upon assessment or the filing of a

claim for refund for the taxable year. The amount of the adjustment considered as a deficiency or as an overpayment, as the case may be, will bear interest to the extent provided by the internal revenue laws applicable to deficiencies and overpayments for the taxable year for which the adjustment is made.

The amount of any adjustment under section 736(c) to be collected in the same manner as if it were a deficiency and the amount of any adjustment to be refunded or credited in the same manner as if it were an overpayment, as the case may be, shall not be diminished by any credit or set-off based upon any item, inclusion, deduction, credit, exemption or gain or loss other than one resulting from the effect of section 736(a) or section 736(b), as the case may be.

The amount of any adjustment under the provisions of section 736(c) which is refunded may not subsequently be recovered in a suit for erroneous refund based upon any adjustment other than one resulting from the revision of excess profits tax liability occasioned by the recomputation of tax pursuant to an election under section 736(a) or section 736(b), as the case may be. The amount of any adjustment under section 736(c) which is assessed and collected as a deficiency may not thereafter be recovered by the taxpayer in any suit for refund based upon any adjustment other than one resulting from the revision of excess profits tax liability occasioned by the recomputation of tax pursuant to an election under section 736(a) or section 736(b), as the case may be.

SUBPART II—RULES IN CONNECTION WITH CERTAIN EXCHANGES

Supplement A—Excess Profits Credit Based on Income

SEC. 740. DEFINITIONS. [ADDED BY SEC. 201, SECOND REV. ACT 1940; AMENDED BY SEC. 8 (a), (b), AND (c), EXCESS PROFITS TAX AMENDMENTS 1941, AND BY SEC. 228(a), REV. ACT 1942.]

For the purposes of this Supplement—

(a) **ACQUIRING CORPORATION.**—The term "acquiring corporation" means—

(1) A corporation which has acquired—

(A) substantially all the properties of another corporation and the whole or a part of the consideration for the transfer of such properties is the transfer to such other corporation of all the stock of all classes (except qualifying shares) of the corporation which has acquired such properties, or

(B) substantially all the properties of another corporation and the sole consideration for the transfer of such properties is the transfer to such other corporation of voting stock of the corporation which has acquired such properties, or

(C) before October 1, 1940, properties of another corporation solely as paid-in surplus or a contribution to capital in respect of voting stock owned by such other corporation, or

(D) substantially all the properties of a partnership in an exchange to which section 112(b)(5), or so much of section 112 (c) or (e) as refers to section 112(b)(5), or to which a corresponding provision of a prior revenue law, is or was applicable.

For the purposes of subparagraphs (B) and (C) in determining whether such voting stock or such paid-in surplus or contribution to capital is the sole consideration, the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded. Subparagraph (B) or (C) shall apply only if the corporation transferring such properties is forthwith completely liquidated in pursuance of the plan under which the acquisition is made, and the transaction of which the acquisition is a part has the effect of a statutory merger or consolidation.

(2) A corporation which has acquired property from another corporation in a transaction with respect to which gain or loss was not recognized under section 112(b)(6) of Chapter 1 or a corresponding provision of a prior revenue law;

(3) A corporation the result of a statutory merger of two or more corporations; or

(4) A corporation the result of a statutory consolidation of two or more corporations.

(b) **COMPONENT CORPORATION.**—The term “component corporation” means—

(1) In the case of a transaction described in subsection (a)(1), the corporation which transferred the assets;

(2) In the case of a transaction described in subsection (a)(2), the corporation the property of which was acquired;

(3) In the case of a statutory merger, all corporations merged, except the corporation resulting from the merger; or

(4) In the case of a statutory consolidation, all corporations consolidated, except the corporation resulting from the consolidation; or

(5) In the case of a transaction specified in subsection (a)(1)(D), the partnership whose properties were acquired.

(c) **INCOME OF CERTAIN COMPONENT CORPORATIONS NOT INCLUDED.**—For the purposes of section 712, section 742, and section 743 in the case of a corporation which is a component corporation in a transaction described in subsection (a)—

(1) Except as provided in paragraph (2), for the purpose of computing, for any taxable year beginning after December 31, 1941, the excess profits credit of such component corporation or of an acquiring corporation of which the acquiring corporation in such transaction is not a component, except in the application of sections 713(f) and 742(h) (other than the limitation on the amount of average base period net income or Supplement A average base period net income, as the case may be, determined thereunder), no account shall be taken of the excess profits net income of such component corporation for any period before the day after such transaction, or of the excess profits net income for any period before the day after such transaction of its component corporations in any transaction before such transaction, and no account shall be taken of

the capital addition or capital reduction of such component corporation either immediately before such transaction or for any prior period, or of the capital addition or capital reduction either immediately before such transaction or for any prior period of its component corporations in any transaction before such transaction.

(2) In case such transaction occurred in a taxable year of such component corporation beginning after December 31, 1941, for the purpose of computing the excess profits credit of such component corporation for such taxable year, the amount of its average base period net income or Supplement A average base period net income, as the case may be, shall be limited to an amount which bears the same ratio to such average base period net income or Supplement A average base period net income, as the case may be (computed without regard to this paragraph but with the application of paragraph (1) in case of a prior transaction described in subsection (a) with respect to such component corporation or a component corporation thereof), as the number of days in such taxable year before the day after such transaction bears to the total number of days in such taxable year.

For the purposes of section 742, in the case of a corporation which is a component corporation in a transaction described in subsection (a), in computing for any taxable year the Supplement A average base period net income of the acquiring corporation in such transaction or of a corporation of which such acquiring corporation becomes a component corporation, no account shall be taken of the excess profits net income of such component corporation for any period beginning with the day after such transaction.

(d) In the case of a taxpayer which is an acquiring corporation the base period shall be the four calendar years 1936 to 1939, both inclusive, except that, if the taxpayer became an acquiring corporation prior to September 1, 1940, the base period shall be the same as that applicable to its first taxable year ending in 1941.

(e) **BASE PERIOD YEARS.**—In the case of a taxpayer which is an acquiring corporation its base period years shall be the four successive twelve-month periods beginning on the same date as the beginning of its base period.

(f) **EXISTENCE OF ACQUIRING CORPORATION.**—For the purposes of section 712(a), if any component corporation of the taxpayer was in existence before January 1, 1940, the taxpayer shall be considered to have been in existence before such date.

(g) **COMPONENT CORPORATIONS OF COMPONENT CORPORATIONS.**—If a corporation is a component corporation of an acquiring corporation, under subsection (b) or under this subsection, it shall (except for the purposes of section 742(d) (1) and (2) and section 743(a) (1), (2), and (3)) also be a component corporation of the corporation of which such acquiring corporation is a component corporation.

(h) **SOLE PROPRIETORSHIP.**—For the purposes of sections 740(a) (1) (D), 740(b) (5), and 742(g), a business owned by a sole proprietorship shall be considered a partnership.

SEC. 35.740-1 PURPOSE AND SCOPE OF SUPPLEMENT A.—(a) The term "Supplement A," when used in these regulations, means sections 740 and 742 to 744. Supplement A provides rules governing the right

to use the excess profits credit based on income and the method of computing such credit, in the case of certain "acquiring" corporations. An acquiring corporation is a domestic corporation which has absorbed one or more other domestic corporations, partnerships, or businesses owned by sole proprietorships in a transaction meeting the requirements set forth in section 740(a), which transaction is generally referred to in these regulations as a "Supplement A transaction." Each such absorbed corporation, partnership, or business owned by a sole proprietorship is designated a component corporation of the acquiring corporation. Furthermore, except for the purposes of section 742(d) (1) and (2) and section 743(a) (1), (2), and (3), if an acquiring corporation is later absorbed by another acquiring corporation, all of the component corporations of the first acquiring corporation become component corporations of the second acquiring corporation. A foreign corporation cannot be an acquiring corporation and neither a foreign corporation, a foreign partnership, nor a business owned by a foreign sole proprietorship can be a component corporation (see section 744).

(b) The purpose of Supplement A is in general to attribute to an acquiring corporation the existence of corporations, partnerships, or businesses owned by sole proprietorships absorbed by it, together with the base period excess profits net income or deficit in excess profits net income and the net capital changes of such predecessors, in order (1) that a corporation the corporate life of which in substance, though not in form, includes the base period may use the excess profits credit based on income and (2) that a corporation composed in whole or in part of component corporations may compute its excess profits credit in the light of the base period experience of the entire enterprise. Accordingly, an acquiring corporation which was not actually in existence before the close of its base period, as defined in section 740(d), is given the right to use the excess profits credit based on income, provided that it has a component corporation actually in existence before January 1, 1940. In the case of an acquiring corporation which was actually in existence before January 1, 1940, and which uses an excess profits credit based on income, its average base period net income must be computed under section 713 or Supplement A, whichever method results in the greater average base period income. If an acquiring corporation computes its average base period net income under Supplement A, it is required to take into account the daily capital addition or reduction of each component corporation in computing its daily capital addition or reduction for each day after the Supplement A transaction, subject to the rules of section 743 and section 35.743-1.

SEC. 35.740-2 TRANSACTIONS WHEREBY A CORPORATION BECOMES AN ACQUIRING CORPORATION.—(a) The types of transactions whereby a corporation can become an acquiring corporation are specifically described in section 740(a). In addition to statutory mergers and consolidations and the acquisition of property in a complete liquidation in which gain or loss is not recognized because of the provisions of section 112(b) (6) or the same section as contained in the Revenue Act of 1936 or 1938, only the following types of transactions are included:

(1) The acquisition by one corporation, in exchange in whole or in part for all of its stock of all classes (except qualifying shares), of substantially all the properties of another corporation. See section 112(g) (1) (D).

(2) The acquisition by one corporation, in exchange solely for all or a part of its voting stock, of substantially all the properties of another corporation, but in determining whether the exchange is solely for voting stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded. See section 112(g) (1) (C). In this type of transaction it is also required that the transferor corporation be forthwith completely liquidated pursuant to the plan under which the transfer of its properties was made and that the transaction of which the transfer is a part have the effect of a statutory merger or consolidation.

(3) The acquisition before October 1, 1940, by one corporation of properties of another corporation solely as paid-in surplus or a contribution to capital in respect of voting stock of the acquiring corporation owned by the transferor corporation, but in determining whether the acquisition is solely as paid-in surplus or a contribution to capital the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded. As in the case of (2) above, it is also required that the transferor corporation be forthwith completely liquidated pursuant to the plan under which the transfer of properties was made and that the transaction of which the transfer is a part have the effect of a statutory merger or consolidation.

(4) The acquisition of substantially all the properties of a partnership in an exchange to which section 112(b) (5), or so much of section 112(c) or (e) as refers to section 112(b) (5), or to which the corresponding provisions of a prior revenue law, is or was applicable. For the purposes of this paragraph a business owned by a sole proprietorship shall be considered a partnership.

(b) The types of transactions set forth in section 740(a), other than those set forth in section 740(a) (1) (C), either are embraced

within the definition of a reorganization contained in section 112(g) (1), are transfers to a controlled corporation within the meaning of section 112(b) (5) and related sections, or are complete liquidations within the meaning of section 112(b) (6). Since Supplement A applies only to cases where there is a sufficient continuity of interest to justify treating a corporation by which the assets of another corporation, a partnership, or a business owned by a sole proprietorship have been acquired, as standing in the place of its predecessor, such transactions must satisfy all the requirements of the regulations prescribed under section 112 with respect to such transactions in order that the transferee corporation may be treated as an acquiring corporation.

(c) The purposes of section 740(c) are fourfold:

(1) In general, it confines the base period experience of a component corporation for the period before the day after the Supplement A transaction and its capital changes immediately before such transaction and for any prior period to the acquiring corporation in such transaction or to an acquiring corporation of which the first acquiring corporation is a component corporation.

(2) It permits a component corporation which does not terminate its existence in connection with the Supplement A transaction to take into account its entire base period experience (including that for the day of and the period before such transaction) for the purposes of sections 713(f) and 742(h), except that its experience for the period before the day after the transaction cannot be taken into account for the purpose of applying the limitation prescribed in such sections as to the maximum amount of average base period net income. (See further section 35.742-1(c).)

(3) It limits a component corporation which does not terminate its existence in connection with the Supplement A transaction, for the purpose of its credit under section 713 or section 742 in computing its excess profits tax for the taxable year in which the transaction occurs, to the proportionate part of its base period experience (after the application of section 740(c) (1) as explained in (1) and (2) above in case of a prior transaction) which the number of days in such taxable year before the day after such transaction bears to the total number of days in such taxable year. If the component corporation goes out of existence on the day of the Supplement A transaction in a taxable year of such component which begins after December 31, 1941, and ends on the day of the Supplement A transaction (by reason of the termination of its existence, or for any other reason), it is entitled, subject to these regulations, to use its entire average base period net income for the purpose of computing its excess profits credit to be applied for such year. (For a corresponding provision in the case of the acquiring corporation in a Supplement A transaction occurring

during its excess profits tax taxable year and an illustration of the application of such corresponding provision and section 740(c)(2), see section 742(f)(2) and section 35.742-3(c).)

(4) It prevents a corporation acquiring a component corporation which does not terminate its existence in connection with the transaction from taking into account the base period experience of the component corporation after such transaction for the purpose of computing its excess profits credit based on income.

The operation of section 740(c), from the standpoint of the purpose described in (1) above, is as follows: If a corporation is a component corporation in, for example, a transaction described in section 740(a)(1)(A), occurring within the base period, and if the existence of such corporation is not terminated in connection with such transaction, its base period experience for the period before the day after such transaction is given to the acquiring corporation in such transaction or to an acquiring corporation of which the first acquiring corporation is a component corporation. Consequently, assuming that such component corporation remains in existence and continues business with properties acquired after such transaction, it will not, except for a limited purpose in computing average base period net income under section 713(f) or section 742(h), receive any benefit from its experience on the day of and prior to such transaction, nor can its experience on the day of and prior to such transaction be passed on to another acquiring corporation in a subsequent Supplement A transaction in which it is the component corporation. The same rule is applicable to each successive Supplement A transaction to which such corporation is a party as a component corporation and in connection with which its existence is not terminated. Section 740(c) applies to all types of Supplement A transactions, whether or not complete liquidation of the component corporation is specifically required in connection therewith.

If a Supplement A transaction occurred in a taxable year of the component corporation beginning in the base period, the excess profits net income of such component corporation for the portion of the taxable year after the transaction and for the prior portion of the taxable year (which is to be taken into account only by the acquiring corporation in such transaction) shall be computed on the basis of its income as shown by its books if the accounts are so kept that excess profits net income for each of such portions can be clearly and accurately determined. If the accounts are not so kept, the excess profits net income for the portion of the taxable year after the transaction shall be considered to be an amount which bears the same ratio to the excess profits net income for such taxable year as the number of days in such taxable year after such transaction bears to the total number

of days in such taxable year, and the excess profits net income for the prior portion of such taxable year shall be considered to be the balance of the excess profits net income for such taxable year. However, if items of income and deduction are clearly and accurately determined to be attributable to particular portions of the taxable year, such items may be eliminated before the above proration is made, and after the proration is made such items will be added to (if items of income) or deducted from (if deductible items) the excess profits net income determined by the proration for the period to which such items are attributable.

The application of the provisions of section 740(c) may be illustrated by the following example:

Example. A, B, and C, corporations which have always made their income tax returns on the calendar year basis, were in existence on January 1, 1936, and have continued in existence at all times since that date. On December 31, 1938, B acquired the properties of A in a transaction described in section 740(a)(1)(A). A converted into cash the stock in B which it received in such transaction, and with the proceeds of such conversion acquired new properties. It operates such properties continuously down to the time C acquires such properties from A on October 19, 1943, in a transaction described in section 740(a)(1)(A). A continues in business throughout 1943, operating properties which it purchased with the proceeds of the conversion of the stock in C received in the second transaction. The operation of section 740(c) under circumstances outlined in this example is as follows:

(a) As to B. In determining its average base period net income under Supplement A for the purposes of the excess profits taxes for 1942 and 1943, B takes into account A's base period experience for 1936, 1937, and 1938. Inasmuch as the transaction involving B occurs within the base period, there is no capital addition or reduction of A to be transferred to B. See section 743.

(b) As to A. In determining its average base period net income under the general average method for the purposes of its excess profits tax for 1942, A takes into account its base period experience for 1939, but is denied the right to use its base period experience for 1936, 1937, and 1938. However, in determining its average base period net income under the growth formula, for purposes of its excess profits tax for 1942, A takes into account its base period experience for 1936, 1937, 1938, and 1939, except that such average cannot exceed its excess profits net income for 1939. When A determines its excess profits tax for 1943, it takes into account for the purpose of its average base period net income under the general average method only four-fifths (the ratio of the number of days in January 1, 1943–October 19, 1943,

inclusive (292), over the number of days in 1943 (365)) of its base period experience for 1939; for the purpose of the growth formula it takes into account only four-fifths of its average base period experience determined under such formula. It does not take into account for the purpose of its tax for 1943 any of its capital addition or reduction attributable to the time immediately before the transaction. A will be entitled, however, to use the credit based on invested capital.

(c) As to C. Section 740(c) is first applicable to C with respect to 1943. In determining its average base period net income under Supplement A for the purposes of its excess profits tax for that year, under the general average method C takes into account one-fifth of A's base period experience for 1939, and for the purpose of the growth formula (except in computing for such purpose the limitation as to the year of the highest excess profits net income) it takes into account one-fifth of A's average base period net income determined under such formula. See section 742(f)(2). In determining C's average base period net income under Supplement A for the purposes of its excess profits tax for 1944, C takes into account all of A's base period experience for 1939 if the general average method is used, or all of A's base period experience for the purpose of the growth formula (except the limitation under such formula with respect to the year of the highest excess profits net income). Moreover, as the transaction involving C occurs after the close of the base period, A's daily capital addition and reduction as of the time immediately before the transaction are transferred to C. See section 743.

SEC. 35.740-3 BASE PERIOD AND BASE PERIOD YEARS OF ACQUIRING CORPORATION.—The base period of a taxpayer, the average base period net income of which is computed under Supplement A, is

(a) the four calendar years 1936, 1937, 1938, and 1939, except in cases to which (b) applies, or

(b) if the taxpayer became an acquiring corporation prior to September 1, 1940, the 48 months preceding the date in 1940 on which its first excess profits tax taxable year ending in 1941 began or the date in 1940 which corresponds to the date in 1941 on which its first excess profits tax taxable year ending in 1941 began, as the case may be.

The base period once determined under this section for purposes of Supplement A is not affected by the fact that the taxpayer subsequently changes its taxable year.

The base period years of an acquiring corporation are four in number, being composed of the four successive 12-month periods beginning on the same date as the beginning of its base period. Thus, if the base

period begins January 1, 1936, the four base period years are the four calendar years 1936, 1937, 1938, and 1939.

SEC. 35.740-4 PARTNERSHIPS AND SOLE PROPRIETORSHIPS UNDER SUPPLEMENT A.—A partnership (or a business owned by a sole proprietorship) can be a component corporation for the purposes of Supplement A, subject to the exceptions in section 740(g). However, a partnership (or a business owned by a sole proprietorship) cannot be an acquiring corporation and, therefore, section 740(g) cannot operate to make any of its predecessors component corporations of its acquiring corporation.

SEC. 741. ALLOWANCE OF EXCESS PROFITS CREDIT. [ADDED BY SEC. 201, SECOND REV. ACT 1940; AMENDED BY SEC. 14, EXCESS PROFITS TAX AMENDMENTS 1941; NOT APPLICABLE TO TAXABLE YEARS UNDER THESE REGULATIONS (SECS. 224(b) AND 228(b), REV. ACT 1942).]

SEC. 742. SUPPLEMENT A AVERAGE BASE PERIOD NET INCOME. [ADDED BY SEC. 201, SECOND REV. ACT 1940; AMENDED BY SECS. 8 AND 15, EXCESS PROFITS TAX AMENDMENTS 1941, AND BY SEC. 228(c), REV. ACT 1942.]

In the case of a taxpayer which is an acquiring corporation, its average base period net income (for the purpose of the credit computed under section 713) shall be the amount computed under section 713 or the amount of its Supplement A average base period net income, whichever is the greater. The Supplement A average base period net income shall be the amount computed without regard to subsection (h) of this section or computed under subsection (h) of this section, whichever is the greater. The Supplement A average base period net income shall be computed as follows:

(a) By ascertaining with respect to each of its base period years—

(1) The amount of its and each of its component corporation's excess profits net income for each of its and such component corporation's taxable years beginning with or within such base period year; or, in the case of each such taxable year of the taxpayer or of such component corporation, as the case may be, in which the deductions plus the credit for dividends received and the credit provided in section 26(a) (relating to interest on certain obligations of the United States and its instrumentalities) exceeded the gross income, the amount of such excess;

(2) (A) The aggregate of the amounts of excess profits net income ascertained under paragraph (1); (B) the aggregate of the excesses ascertained under paragraph (1); and (C) the difference between the aggregates found under clause (A) and clause (B). If the aggregate ascertained under clause (A) is greater than the aggregate ascertained under clause (B), the difference shall for the purposes of subsection (b) be designated a "plus amount", and if the aggregate ascertained under clause (B) is greater than the aggregate found under clause (A), the difference shall for the purposes of subsection (b) be designated a "minus amount".

If, in the case of the taxpayer or any component corporation of the taxpayer, one and only one taxable year of the taxpayer or such component corporation, as the case may be, begins with or within such base

period year and such taxable year is less than twelve months, the amount of the excess profits net income, or the amount of such excess of deductions plus the credit for dividends received and the credit provided in section 26(a) (relating to interest on certain obligations of the United States and its instrumentalities) over gross income, as the case may be, for such taxable year, shall be placed on an annual basis in the same manner as is provided in section 711(a)(3). If more than one taxable year of the taxpayer or such component corporation, as the case may be, begins with or within such base period year, the aggregate of the amounts of excess profits net income minus the aggregate of the excesses of deductions plus the credit for dividends received and the credit provided in section 26(a) (relating to interest on certain obligations of the United States and its instrumentalities) over gross income, or the aggregate of such excesses minus the aggregate of the amounts of excess profits net income, as the case may be, for such taxable years shall be adjusted to such extent as the Commissioner, under regulations prescribed by him with the approval of the Secretary, prescribes as necessary in order that such base period year shall reflect income for a period of twelve months. For the purposes of this section, a taxable year of a component corporation beginning within the base period which also begins with or within the taxable year of the acquiring corporation in which the acquisition occurred, or which also begins with or within the same base period year with which or within which began such taxable year of the acquiring corporation, shall be considered a taxable year of the acquiring corporation, and such taxable year shall be considered to have begun in the base period year with which or within which such taxable year of the acquiring corporation began.

(b) By adding the plus amounts ascertained under subsection (a)(2) for each year of the base period; and

(1) If the tax under this subchapter is being computed for a taxable year not beginning after December 31, 1941, by subtracting from such sum, if for two or more years of the basis [sic] period there was a minus amount, the sum of the minus amounts, excluding the greatest; or

(2) If the tax under this subchapter is being computed for a taxable year beginning after December 31, 1941, by subtracting from such sum the sum of the minus amounts. If the amount used under the preceding sentence for the lowest year is less than 75 per centum of the sum of the plus amounts reduced by the sum of the minus amounts for the other years in the base period divided by three, the amount which shall be used for such lowest year shall be 75 per centum of the amount last ascertained.

(c) By dividing the amount ascertained under subsection (b) by four.

(d) In no case shall the average base period net income be less than zero. In the case of a taxpayer which becomes an acquiring corporation in any taxable year beginning after December 31, 1939, if, on September 11, 1940, and at all times until the taxpayer became an acquiring corporation—

(1) the taxpayer owned not less than 75 per centum of each class of stock of each of the qualified component corporations involved in the transaction in which the taxpayer became an acquiring corporation; or

(2) one of the qualified component corporations involved in the transaction owned not less than 75 per centum of each class of stock of the taxpayer, and of each of the other qualified component corporations involved in the transaction, the average base period net income of the taxpayer shall not be less than (A) the average base period net income of that one of its qualified component corporations involved in the transaction the average base period net income of which is greatest, or (B) the average base period net income of the taxpayer computed without regard to the base period net income of any of its qualified component corporations involved in the transaction. As used in this subsection, the term "qualified component corporation" means a component corporation which was in existence on the date of the beginning of the taxpayer's base period.

(e) For the purposes of subsection (a) (1) of this section—

(1) If neither the taxpayer corporation nor any of its component corporations was actually in existence on December 31, 1936, the excess profits net income of each such corporation for each base period year at no time during which any of such corporations was actually in existence, shall (except in the case of a corporation which became a component corporation of its acquiring corporation before the beginning of the acquiring corporation's first taxable year which began in 1940) be an amount equal to 8 per centum of the excess of—

(A) in the case of any such corporation to which paragraph (2) is not applicable, the daily invested capital of such corporation for the first day of its first taxable year under this subchapter beginning in 1940 over

(B) an amount equal to the same percentage of such daily invested capital as would be applicable under section 720 in reduction of the average invested capital of such corporation for the last taxable year beginning in 1939 if such section had been applicable to such year (computed as if the admissible and inadmissible assets of any other such corporation with respect to which it became, in such taxable year, an acquiring corporation, had been held by it).

(2) In case the transaction by which a corporation became a component corporation of its acquiring corporation occurred in the last taxable year of such component corporation beginning in 1939 but on a day in a taxable year of such acquiring corporation beginning in 1940, the excess profits net income of such component corporation for each base period year described in paragraph (1) shall be an amount equal to 8 per centum of the excess of—

(A) the daily invested capital of such component corporation for such day, over

(B) an amount equal to the same percentage of such daily invested capital as would be applicable under section 720 in reduction of the average invested capital of such component corporation for the twelve-month period ending with the preceding day if such twelve-month period constituted a taxable year and such section had been applicable to such taxable year.

(3) In case any corporation described in paragraph (1) owned stock in any other such corporation on the first day of such owning corporation's first taxable year under this subchapter beginning in

1940, the amounts computed under subparagraphs (A) and (B) of paragraphs (1) and (2) with respect to such corporations shall be adjusted, under regulations prescribed by the Commissioner with the approval of the Secretary, to such extent as may be necessary to prevent the excess profits net income of such corporations for the base period years described in paragraph (1) from reflecting money or property having been paid in by either of such corporations to the other for stock or as paid-in surplus or as a contribution to capital, or from reflecting stock of either having been paid in for stock of the other or as paid-in surplus or as a contribution to capital. For the purposes of this paragraph, stock in either such corporation which has in the hands of the other corporation a basis determined with reference to the basis of stock previously acquired by the issuance of such other corporation's own stock shall be deemed to have been paid in for the stock of such other corporation.

(4) In determining whether, for any taxable year, the deductions plus the credit for dividends received and the credit provided in section 26(a) (relating to interest on certain obligations of the United States and its instrumentalities) exceeded the gross income, and in determining the amount of such excess, the adjustments provided in section 711(b) (1) shall be made.

(f) (1) If, after December 31, 1935—

(A) the taxpayer acquired stock in another corporation, and thereafter such other corporation became a component corporation of the taxpayer, or

(B) a corporation (hereinafter called "first corporation") acquired stock in another corporation (hereinafter called "second corporation"), and thereafter the first and second corporations became component corporations of the taxpayer, then to the extent that the consideration for such acquisition was not the issuance of the taxpayer's or first corporation's, as the case may be, own stock, the Supplement A average base period net income of the taxpayer shall be reduced, and the transferred capital addition and reduction adjusted, in respect of the income and capital addition and reduction of the corporation whose stock was so acquired and in respect of the income and capital addition and reduction of any other corporation which at the time of such acquisition was connected directly or indirectly through stock ownership with the corporation whose stock was so acquired and which thereafter became a component corporation of the taxpayer, in such amounts and in such manner as shall be determined in accordance with regulations prescribed by the Commissioner with the approval of the Secretary. For the purposes of this paragraph, stock which has, in the hands of the taxpayer or first corporation, as the case may be, a basis determined with reference to the basis of stock previously acquired by the issuance of the taxpayer's or first corporation's, as the case may be, own stock, shall be considered as having been acquired in consideration of the issuance of the taxpayer's or first corporation's, as the case may be, own stock.

(2) If during the taxable year for which tax is computed under this subchapter the taxpayer acquires assets in a transaction which constitutes it an acquiring corporation, the amount includible under subsection (a), attributable to such transaction, shall be limited to an amount which bears the same ratio to the amount computed without

regard to this subsection as the number of days in the taxable year after such transaction bears to the total number of days in such taxable year.

(g) In the case of a partnership which is a component corporation by virtue of section 740(b)(5), the computations required by this Supplement shall be made, under rules and regulations prescribed by the Commissioner with the approval of the Secretary, as if such partnership had been a corporation. For the purpose of such computations, in making the adjustment for income taxes required by section 711(b)(1)(A), the partnership so regarded as a corporation shall be considered as having distributed all its net income as a dividend.

(h) INCREASED EARNINGS IN LAST HALF OF BASE PERIOD.—

(1) GENERAL RULE.—The Supplement A average base period net income determined under this subsection shall be computed by ascertaining for each half of the base period the sum of the plus amounts determined under subsection (a) reduced if for any year in such half a minus amount was determined by the minus amount for such year. If the amount ascertained for the second half exceeds the amount ascertained for the first half, the Supplement A average base period net income shall be the sum, divided by two, of the amount so ascertained for the second half plus one-half of such excess, except that it shall not exceed the largest plus amount determined under subsection (a) with respect to any base period year.

(2) LIMITATION ON AMOUNT INCLUDIBLE FOR CERTAIN TAXABLE YEARS ENDING AFTER MAY 31, 1940.—For the purposes of this subsection the excess profits net income of any corporation for any taxable year beginning in 1939 and ending after May 31, 1940, shall in no case exceed an amount computed as follows:

(A) By reducing the excess profits net income by an amount which bears the same ratio thereto as the number of months after May 31, 1940, bears to the total number of months in such taxable year; and

(B) By adding to the amount ascertained under subparagraph (A) an amount which bears the same ratio to the excess profits net income for the last preceding taxable year as such number of months after May 31, 1940, bears to the number of months in such preceding year. The amount added under this subparagraph shall not exceed the amount of the excess profits net income for such last preceding taxable year.

(C) If the number of months in such preceding taxable year is less than such number of months after May 31, 1940, by adding to the amount ascertained under subparagraph (B) an amount which bears the same ratio to the excess profits net income for the second preceding taxable year as the excess of such number of months after May 31, 1940, over the number of months in such preceding taxable year bears to the number of months in such second preceding taxable year.

SEC. 35.742-1 GENERAL RULES FOR DETERMINING SUPPLEMENT A AVERAGE BASE PERIOD NET INCOME.—(a) *Introductory.*—In the case of an acquiring corporation which was actually in existence before January 1, 1940, its average base period net income, for the purposes

of the excess profits credit based on income, shall be (1) the amount computed under section 713 with reference to its base period experience but without reference to the base period experience of its component corporations; or (2) the amount of its Supplement A average base period net income, computed under section 742 with reference to its base period experience and also with reference to the base period experience of its component corporations, whichever of such amounts is the greater. In the case of an acquiring corporation which was not actually in existence before January 1, 1940, but which was constructively in existence before such date through a component corporation, its average base period net income, for the purposes of such credit, shall be its Supplement A average base period net income, computed under section 742.

In the case of an acquiring corporation which desires to compute its average base-period net income under Supplement A, section 742 is not intended to require such corporation to include in its return the computations of base period income under section 713 for the purpose of showing that the computations under Supplement A result in the greater average base period net income. A return setting forth one set of computations of base period income shall be acceptable. A return filed in this manner shall be audited as filed, regardless of whether the omitted computation of average base period net income would result in a lesser tax. If a corporation files a return which contains only one set of computations of base period income, it is not thereby precluded from establishing that the computations used resulted in an overpayment of the excess profits tax or from filing a claim for the refund thereof.

The Supplement A average base period net income of an acquiring corporation shall be (1) the amount computed under section 742 without regard to subsection (h) of such section, or (2) the amount computed under such subsection, whichever of such amounts is the greater. If neither the acquiring corporation nor any of its component corporations was in existence at any time during a base period year, then, in computing the Supplement A average base period net income of the acquiring corporation, section 742(e) (1), (2), and (3) is applicable regardless of whether the computation is made under section 742(h) or without regard to such section.

(b) *General average method.*—(1) *In general.*—The following steps are required for the computation of the Supplement A average base period net income under section 742 without regard to subsection (h) of such section (for exceptions and limitations as to amounts of excess profits net income or deficit to be included in average base period, see section 35.742-3, and for computation of excess profits net income for base period years during which neither the taxpayer

nor any of its component corporations was in existence at any time, see section 35.742-4):

(i) The excess profits net income or the excess of deductions plus the credit for dividends received and the credit provided in section 26(a) over gross income (hereinafter referred to as "deficit in excess profits net income") of the acquiring corporation and each component corporation for each taxable year beginning with or within a base period year of the acquiring corporation must be determined.

(ii) The group excess profits net income or group deficit in excess profits net income for each base period year of the acquiring corporation, i. e., the aggregate of the amounts determined with respect to each corporation separately for taxable years beginning with or within such base period year, must be determined as provided in paragraph (3) of this subsection.

(iii) The taxpayer's Supplement A average base period net income is then ascertained by determining the aggregate of the group excess profits net incomes and deficits in excess profits net income (with adjustment in certain cases of the amount for the lowest year) and dividing by 4, as provided in paragraph (4) of this subsection.

(2) *Determination of excess profits net income or deficit in excess profits net income of acquiring corporation and each component corporation.*—The first step in computing the average base period net income of an acquiring corporation is the determination of the excess profits net income or deficit in excess profits net income of the acquiring corporation and each component corporation for each taxable year beginning with or within a base period year of the acquiring corporation. Such excess profits net income or deficit in excess profits net income shall be computed with the adjustments provided in section 711(b).

In the case of a component corporation which is a partnership or a business owned by a sole proprietorship, its excess profits net income or deficit in excess profits net income for each taxable year in the base period shall be determined as though such partnership or business owned by a sole proprietorship had been a corporation for each such year. Among the adjustments which are necessary in computing the excess profits net income or deficit in excess profits net income are the following:

(i) A reasonable deduction for salary or compensation to each partner or the sole proprietor for personal services actually rendered shall be allowed;

(ii) The credit for dividends received provided by section 26(b) and section 711(b)(1)(G) shall be allowed;

(iii) The treatment of capital gains and losses shall be that applicable to corporations;

(iv) The deduction for charitable contributions shall be that allowed by section 23(q) ;

(v) The income taxes allowed as a deduction under section 23(c) shall be computed as though the partnership or business owned by a sole proprietorship were a corporation and in computing such taxes the partnership or business owned by a sole proprietorship shall be deemed to have distributed all its net income as a dividend.

(3) *Determination of group excess profits net income or deficit in excess profits net income.*—The group excess profits net income or deficit in excess profits net income of an acquiring corporation for each base period year is determined by adding together the excess profits net incomes of the several corporations determined under paragraph (2) of this subsection for each taxable year beginning with or within such base period year and subtracting from such sum the sum of the deficits in excess profits net income so determined for each such taxable year, with the exceptions and limitations set forth in section 35.742-2(a). If the sum of the excess profits net incomes for such base period year exceeds the sum of the deficits in excess profits net income for such base period year, the difference is the group excess profits net income for such base period year. If the sum of the deficits in excess profits net income exceeds the sum of the excess profits net incomes, the difference is the group deficit in excess profits net income for such base period year. This paragraph may be illustrated by the following examples:

Example (1).—The X Corporation, which was organized prior to 1936, and which has always made its income tax returns on the calendar year basis, is computing its excess profits tax for the calendar year 1942. In 1939 it became an acquiring corporation of the Y Corporation and the Z Corporation, both of which were organized prior to January 1, 1936. The Y Corporation made its income tax returns on the basis of the fiscal year beginning July 1, and the Z Corporation made its income tax returns on the calendar year basis. For the calendar year 1936 the X Corporation had an excess profits net income of \$50,000, and the Z Corporation had an excess profits net income of \$20,000. For the fiscal year beginning July 1, 1936, the Y Corporation had an excess profits net income of \$30,000. For its first base period year, i. e., the calendar year 1936, the group excess profits net income of X, the acquiring corporation, is \$100,000, computed as follows:

Excess profits net income of X Corporation for 1936.....	\$50, 000
Plus:	
Excess profits net income of Z Corporation for 1936.....	20, 000
Excess profits net income of Y Corporation for fiscal year beginning July 1, 1936.....	80, 000
Group excess profits net income for 1936.....	100, 000

The Y Corporation's fiscal year ending June 30, 1936, cannot be taken into account since it is a taxable year which did not begin with or within the first base period year.

Example (2). If, in the case of the same corporations as in example (1), for the calendar year 1937 the X Corporation had an excess profits net income of \$75,000 and the Z Corporation had an excess profits net income of \$30,000 and if the Y Corporation for the fiscal year beginning July 1, 1937, had a deficit in excess profits net income of \$5,000, the X Corporation would have a group excess profits net income for its second base period year, i. e., the calendar year 1937, of \$100,000, computed as follows:

Excess profits net income of X Corporation for 1937.....	\$75, 000
Plus: Excess profits net income of Z Corporation for 1937.....	30, 000
Total.....	105, 000
Less: Deficit in excess profits net income of Y Corporation for fiscal year beginning July 1, 1937.....	5, 000
Group excess profits net income for 1937.....	100, 000

Example (3). If for the calendar year 1938 the X Corporation had an excess profits net income of \$40,000 and the Z Corporation had a deficit in excess profits net income of \$50,000, and if the Y Corporation had an excess profits net income of \$5,000 for the fiscal year beginning on July 1, 1938 (which ended before the acquisition in 1939), the X Corporation would have a group deficit in excess profits net income for its third base period year, i. e., the calendar year 1938, of \$5,000, computed as follows:

Deficit in excess profits net income of Z Corporation for 1938.....	\$50, 000
Less:	
Excess profits net income of X Corporation for 1938.....	\$40, 000
Excess profits net income of Y Corporation for fiscal year beginning July 1, 1938.....	5, 000
	45, 000
Group deficit in excess profits net income for 1938.....	5, 000

(4) *Determination of average base period net income.*—The average base period net income of an acquiring corporation, in general, is the sum of the group excess profits net incomes for the base period years for which there were group excess profits net incomes, reduced by the sum of the group deficits in excess profits net income for the base period years for which there were group deficits in excess profits net income, the remainder being divided by four. However, in cases in which the lowest amount for any base period year is less than 75 percent of the average for the other three years, there shall be substituted for such lowest amount an amount of excess profits net income equal to 75 percent of such average, and then the average base period net

income shall be computed for the four base period years as under the general rule. In no case shall the average base period net income be less than zero. This paragraph may be illustrated by the following example:

Example. The group net income or group deficit in excess profits net income of the P Corporation for each of its base period years is as follows (a group deficit in excess profits net income being preceded by a minus sign):

First base period year.....	\$100,000
Second base period year.....	—50,000
Third base period year.....	—25,000
Fourth base period year.....	75,000

The average base period net income of the P Corporation is \$46,875, computed as follows:

(1) Group deficit in excess profits net income for lowest year.....	—\$50,000
Average for other 3 years ($\$100,000 - \$25,000 + \$75,000 \div 3$).....	50,000
75 percent of average for other 3 years.....	37,500
(2) Group excess profits net income for first year.....	100,000
Plus: Group excess profits net income for second year (as determined above for lowest year).....	37,500
Group excess profits net income for fourth year.....	75,000
Total.....	212,500
Less: Group deficit in excess profits net income for third year.....	—25,000
Remainder.....	187,500
Average base period net income ($\$187,500 \div 4$).....	46,875

Section 742(d) provides for a minimum average base period net income in the case of a taxpayer which becomes an acquiring corporation in a transaction taking place in a taxable year beginning after December 31, 1939, if, on September 11, 1940, and at all times thereafter until the transaction takes place, either the taxpayer owns at least 75 percent of each class of stock of each qualified component corporation involved in the transaction, or one of such qualified component corporations owns at least 75 percent of each class of stock of the taxpayer and each of the other qualified component corporations. In such case the average base period net income of the taxpayer shall be determined as provided in section 742(d). The term "qualified component corporation," as used in this paragraph, means a component corporation which was in existence on the date of the beginning of the taxpayer's base period. For the purposes of this paragraph section 740(g) is not applicable.

SEC. 35.742-2 COMPUTATION OF AVERAGE BASE PERIOD NET INCOME UNDER SECTION 742(h)—INCREASED EARNINGS IN LAST HALF OF BASE PERIOD.—(a) In general.—The determination of the Supplement A average base period net income under the method provided in section

742(h) is operative only if the sum of the group excess profits net incomes of the taxpayer for the second half of its base period, reduced by the sum of its deficits in excess profits net income for such half, is greater than such sum so reduced for the first half and the average base period net income determined under section 742(h) is greater than the amount determined under section 742 without regard to subsection (h) of such section. The following steps are required for the computation of the Supplement A average base period net income under the method provided in section 742(h) :

(1) The excess profits net income or deficit in excess profits net income of the acquiring corporation and of each component corporation for each taxable year beginning with or within each base period year of the acquiring corporation is determined as provided in section 35.742-1(b).

(2) The group excess profits net income or group deficit in excess profits net income of the acquiring corporation for each of its base period years is determined as provided in section 35.742-1(b).

(3) There is computed for each half of the base period the sum of the group excess profits net incomes for the base period years in such half, reduced, if for one or more of such years there was a group deficit in excess profits net income, by the sum of such group deficits. In making this computation, the lowest amount for any base period year is not adjusted as in the case of the computation under the general average method described in section 35.742-1(b).

(4) The excess of the amount ascertained for the second half over the amount ascertained for the first half is divided by 2.

(5) The amount ascertained under paragraph (4) is added to the amount ascertained under paragraph (3) for the second half of the base period.

(6) The amount found under paragraph (5) is divided by 2.

(7) The amount ascertained under paragraph (6) shall be the Supplement A average base period net income determined under the method provided in section 742(h), except that the Supplement A average base period net income so determined shall in no case be greater than the highest group excess profits net income for any base period year. For the purposes of this limitation, in the case of a corporation which became a component corporation in a Supplement A transaction occurring in a taxable year beginning in the base period, no account shall be taken of its excess profits net income before the day after such transaction or of any of its component corporations acquired before the day after such transaction. (See section 740(c)(1).)

The computation of the Supplement A average base period net income under the method provided in section 742(h) may be illustrated by the following examples:

Example (1). The X Corporation, an acquiring corporation, has the following amounts of group excess profits net incomes for the base period years in its base period: 1936, \$100,000; 1937, \$200,000; 1938, \$300,000; and 1939, \$400,000. Its Supplement A average base period net income under the method provided in section 742(h) is \$400,000, computed as follows:

(i) Sum of group excess profits net incomes for second half of base period (\$300,000 plus \$400,000)	\$700, 000
(ii) Sum of group excess profits net incomes for first half of base period (\$100,000 plus \$200,000)	300, 000
(iii) Excess of item (i) over item (ii)	400, 000
(iv) One-half of item (iii) (\$400,000 divided by 2)	200, 000
(v) Sum of item (i) plus item (iv) (\$700,000 plus \$200,000)	900, 000
(vi) Item (v) divided by 2 (\$900,000 divided by 2)	450, 000
(vii) Highest group excess profits net income for any base period year (1939)	400, 000
(viii) Supplement A average base period net income (item (vii) since such item is less than item (vi))	400, 000

Example (2). The X Corporation was in existence throughout its base period and has always made its income tax returns on the calendar year basis. On July 1, 1938, it transferred its property to another corporation in a transaction described in section 740(a) (1) (A). It immediately exchanged the stock received in such transaction for other assets and continued in business. On December 31, 1938, it acquired all of the assets of the Y Corporation in a Supplement A transaction. The Y Corporation was in existence on January 1, 1936, and made its income tax returns on the calendar year basis. The excess profits net incomes of the X Corporation for 1936, 1937, and 1938 were, respectively, \$75,000, \$125,000, and \$350,000. With respect to the last amount, \$200,000 thereof is attributable to the part of 1938 after the transaction in which the X Corporation was a component corporation and \$150,000 is attributable to the prior part of such year. The excess profits net incomes of the Y Corporation for 1936, 1937, and 1938 were, respectively, \$25,000, \$75,000, and \$200,000. The excess profits net income of the X Corporation for 1939 was \$300,000. In applying the method provided in section 742(h), the X Corporation is required to take into account its excess profits net incomes for the period before the date of the transaction in which it was a component corporation, but, for the purposes of the limitation as to the maximum amount of Supplement A average base period net income, it is not permitted to take into account such income. (See section 740(c) (1).) Accordingly, its group excess profits net incomes for the base period years are, respectively, \$100,000, \$200,000, \$550,000, and \$300,000, and its Supplement A average base period net income is \$400,000, computed as follows:

(i) Sum of group excess profits net incomes for second half of base period (\$350,000 plus \$300,000).....	\$850, 000
(ii) Sum of group excess profits net incomes for first half of base period (\$100,000 plus \$200,000).....	300, 000
(iii) Excess of item (i) over item (ii).....	550, 000
(iv) One-half of item (iii) (\$550,000 divided by 2).....	275, 000
(v) Sum of item (i) plus item (iv) (\$850,000 plus \$275,000).....	1, 125, 000
(vi) Item (v) divided by 2 (\$1,125,000 divided by 2).....	562, 500
(vii) Highest group excess profits net income for any base period year for purposes of limitation as to maximum average income (1938). (Effective income for 1938 for purposes of limitation is \$400,000 after excluding \$150,000 attributable to part of year preceding July 2, 1938).....	400, 000
(viii) Supplement A average base period net income (item (vii) since such item is less than item (vi)).....	400, 000

The restriction upon the limitation illustrated in the last example applies also in the case of a component corporation computing the average base period net income under section 713(f) and not under section 742(h), for the purpose of its credit for a taxable year beginning after December 31, 1941 (see section 740(c)(1)). Thus, if in example (2) above, the X Corporation had continued in existence without acquiring the assets of the Y Corporation and, as in the example, its excess profits net income for 1939 was \$300,000, its average base period net income computed under section 713(f) (without the benefit of the experience of Y Corporation) would be limited to \$300,000. The otherwise highest amount of excess profits net income, \$350,000 for 1938, would be reduced under the restriction in section 740(c) to \$200,000 by the elimination of \$150,000 attributable to the part of the taxable year preceding July 2, 1938.

(b) *Limitation in case of taxable year beginning in 1939 and ending after May 31, 1940.*—For the purpose of computing the Supplement A average base period net income under the method provided in section 742(h), section 742(h)(2) provides certain limitations on the amount of the excess profits net income for any taxable year of the taxpayer or a component corporation beginning in 1939 and ending after May 31, 1940.

Section 742(h)(2) (A) and (B) may be illustrated by the following example:

Example. The X Corporation makes its income tax returns on the basis of a fiscal year ending September 30. It had an excess profits net income of \$400,000 for the fiscal year ended September 30, 1939. Its excess profits net income for the fiscal year ended September 30, 1940, before the application of section 742(h)(2) (A) and (B), is \$600,000. Four months of the latter fiscal year are after May 31, 1940. Under section 742(h)(2) (A) and (B) the excess profits net

income of the corporation for the fiscal year ended September 30, 1940, is \$533,333.33, computed as follows:

(1) Excess profits net income before application of section 742(h) (2) (A) and (B)	\$600,000.00
(2) Amount by which item (1) is to be reduced under section 742(h) (2) (A) ($\frac{1}{12}$ of \$600,000)	200,000.00
(3) Item (1) less item (2) (\$600,000 minus \$200,000)	400,000.00
(4) Amount to be added to item (3) under section 742(h) (2) (B) ($\frac{1}{12}$ of \$400,000, the amount of excess profits net income for the fiscal year ended September 30, 1939)	133,333.33
(5) Excess profits net income for fiscal year ended September 30, 1940, after application of section 742(h) (2) (item (3) plus item (4), or \$400,000 plus \$133,333.33)	533,333.33

If on December 31, 1940, the X Corporation acquired the Y Corporation in a Supplement A transaction, and if the Y Corporation had made its income tax returns on the calendar year basis and had an excess profits net income for the calendar year 1939 of \$100,000, the X Corporation's group excess profits net income for 1939 would be \$633,333.33 (\$533,333.33 plus \$100,000).

Section 742(h) (2) (C) may be illustrated by the following example:

Example. The last three taxable years in the base period of the Z Corporation and the number of months in, and the excess profits net income for, such taxable years are as follows:

Taxable years		Number of months	Excess profits net income
Beginning—	Ending—		
July 1, 1938	June 30, 1939	12	\$400,000
July 1, 1939	September 30, 1939	3	75,000
October 1, 1939	September 30, 1940	12	600,000

Under section 742(h) (2) the excess profits net income of the corporation for the fiscal year ended September 30, 1940, is \$508,333.33, computed as follows:

(i) Excess profits net income before application of section 742(h) (2) (A) and (B)	\$600,000.00
(ii) Amount by which item (i) is to be reduced under section 742(h) (2) (A) ($\frac{4}{12}$ of \$600,000)	200,000.00
(iii) Item (i) less item (ii) (\$600,000 minus \$200,000)	400,000.00
(iv) Amount to be added to item (iii) under section 742(h) (2) (B) ($\frac{4}{3}$ of \$75,000 but not in excess of \$75,000)	75,000.00
(v) Amount to be added to item (iii) under section 742(h) (2) (C) ($\frac{1}{12}$ of \$400,000)	33,333.33
(vi) Excess profits net income for fiscal year ended September 30, 1940, after application of section 742(h) (2) (sum of items (iii), (iv), and (v), or \$400,000 plus \$75,000 plus \$33,333.33)	508,333.33

The Z Corporation's excess profits net income for the two taxable years beginning in 1939 are required to be placed on an annual basis in order to determine its excess profits net income for the base period year 1939. (See section 742(a).) For this purpose, its excess profits net income for the taxable year beginning October 1, 1939, and ending September 30, 1940, is the amount as reduced by the application of section 742(h)(2). If on December 31, 1941, the Z Corporation acquired a component corporation in a Supplement A transaction, and if the component corporation had made its income tax returns on the calendar year basis, Z Corporation's group excess profits net income for the base period year 1939 would be the sum of (A) the excess profits net income of the component corporation for the calendar year 1939, plus (B) the amount resulting from placing Z Corporation's actual excess profits net income for the short taxable year beginning on July 1, 1939, and its excess profits net income for the fiscal year ending September 30, 1940 (as reduced under section 742(h)(2)) on an annual basis.

SEC. 35.742-3 EXCEPTIONS AND LIMITATIONS AS TO AMOUNTS OF EXCESS PROFITS NET INCOME OR DEFICIT TO BE INCLUDED IN SUPPLEMENT A AVERAGE BASE PERIOD NET INCOME—APPLICABLE UNDER BOTH GENERAL AVERAGE METHOD AND INCREASED EARNINGS METHOD.—The amount of excess profits net income or deficit in excess profits net income of an acquiring corporation or a component corporation for a taxable year beginning with or within a base period year which may be included in computing the group excess profits net income or deficit in excess profits net income for such base period year is to be determined subject to the exceptions and limitations set forth in subsections (a), (b), and (c) of this section.

(a) *Adjustment under section 742(a) for change in taxable year.*
 (1) *Introductory.*—Section 742(a) requires adjustment where an acquiring corporation or component corporation has one or more taxable years beginning with or within a base period year other than one taxable year of 12 months.

If the taxpayer or a component corporation has only one taxable year beginning with or within a base period year and such taxable year is less than 12 months, or if the taxpayer or a component corporation has two or more taxable years beginning with or within a base period year, the experience of the taxpayer or of such component for such short taxable year or for such taxable years shall be adjusted to reflect 12 months' experience by either of two methods described in this subdivision. The first method is hereafter referred to as the daily average method and the second method is hereafter referred to as the actual experience method. The second method may be used only if the taxpayer establishes to the satisfaction of the Commissioner that

the actual experience method will more clearly reflect actual group excess profits net income (or deficit) for the base period year. See (4) of this subsection. In either case, the adjustment is to be made only as provided in this subsection under the heading "daily average method" or "actual experience method," whichever method is applicable. Only one method may be used for the same base period year. Under either method, any period, the experience of which is not to be included in the average base period net income of the taxpayer under the rules provided in section 740(c), is not to be considered any part of a taxable year of the acquiring corporation or the component.

(2) *Short taxable year or two taxable years other than year of Supplement A transaction.*—If only one taxable year of the taxpayer or of a component begins in a base period year and such taxable year is less than 12 months, or if two or more taxable years of the taxpayer or of a component begin in a base period year, the following adjustment shall be made if the Supplement A transaction did not occur in such base period year or in a taxable year of the acquiring corporation beginning in such base period year:

Daily average method.—Under this method, the aggregate of the amounts of excess profits net income minus the aggregate of the amounts of deficit in excess profits net income, or vice versa, as the case may be, for the period to be adjusted (i. e., such short taxable year or such two or more taxable years, as the case may be) shall be placed on an annual basis by dividing by the number of days in such period and by multiplying by the number of days in the base period year.

Actual experience method.—Under this method, the actual excess profits net income (or deficit) for the period of 12 months beginning with the first day of the period to be adjusted (i. e., such short taxable year or such two or more taxable years, as the case may be) shall be considered the total excess profits net income (or deficit) of the acquiring corporation or of the component, as the case may be, which is to be attributed to the base period year under section 742(a)(1). If such 12-month period ends after May 31, 1940, or with or after a month in which a Supplement A transaction occurs, the experience after such date or for and after such month, whichever first occurs, shall not be used. In such case, there shall be added to the experience used the experience for as many consecutive months immediately preceding the beginning of the period of months used as will produce an aggregate period of 12 months. If 12 months' experience cannot be obtained by either of the above rules, the actual experience method may not be used.

(3) *Two taxable years including year of Supplement A transaction.*—(i) *General description.*—If two or more taxable years of a component corporation or if two or more taxable years of the taxpayer

(including as such any year of the component, as provided in the following sentence) begin in a base period year and if the Supplement A transaction occurs in such base period year or in a taxable year of the acquiring corporation beginning in such base period year, adjustment shall be made in the two categories of cases described below and in the manner set forth below. For this purpose, section 742(a) provides that a taxable year of a component corporation—

(A) which begins within the base period and which also begins with or within the taxable year of the acquiring corporation in which the acquisition occurred, or

(B) which begins with or within the same base period year with which or within which began the taxable year of the acquiring corporation in which the acquisition occurred,

shall be treated as a taxable year of the acquiring corporation and as if it began in the base period year with which or within which such taxable year of the acquiring corporation began. The adjustment to be made is set forth in (ii) and (iii) below.

(ii) *First category*.—In the first category are cases in which, in a base period year, the first taxable year of each corporation, which became a component in any taxable year of the acquiring corporation beginning in such base period year, began on the same date, if (1) the acquiring corporation's first taxable year in such base period year also began on such date, or (2) the acquiring corporation's first taxable year upon its coming into existence began on the date of a Supplement A transaction in such base period year.

Daily average method.—In such cases, a group excess profits net income or group deficits in excess profits net income, as the case may be, for only the acquiring corporation and any such component corporations shall be determined for such base period year, in the manner provided in section 35.742-1(b)(3). This amount shall be the excess profits net income or deficit in excess profits net income, as the case may be, of such acquiring corporation (including such component corporations) for such base period year, unless the period from the beginning of the first taxable year of any such component corporation beginning in such base period year to the end of the last taxable year of such acquiring corporation beginning in such base period year, inclusive, is not a period of 12 months. In such latter case, the amount thus determined shall be placed on an annual basis by dividing by the total number of days in such period and by multiplying by the number of days in such base period year. The rules applicable in this first category may be illustrated by the following examples:

Example (1). The A Corporation computes its income tax on the calendar year basis. On July 1, 1936, the A Corporation is reorganized into the B Corporation in a Supplement A transaction. The B Corporation computes its income tax on the basis of the fiscal year begin-

ning July 1 until it goes on a calendar year basis beginning January 1, 1937. Although A's short period is considered a taxable year of B, since the total period of both taxable years is 12 months, the excess profits net income, or the deficit in excess profits net income, of the B Corporation for 1936 is the sum of the excess profits net income (or deficit) for each of the two short taxable years (not placed on an annual basis) of A and B for the calendar year 1936.

Example (2). The C Corporation and the D Corporation compute their income taxes on the calendar year basis. On July 1, 1937, C and D consolidated in a Supplement A transaction to form the E Corporation which thereafter computed its income tax on a fiscal year basis beginning July 1 (until 1940 when it went on a calendar year basis). The excess profits net income, or the deficit in excess profits net income, of E for the base period year 1937, is determined by computing the excess of the aggregate of the excess profits net incomes of C and D for the period January 1, 1937–July 1, 1937, inclusive, and of E for the period July 1, 1937–June 30, 1938, over the deficit in excess profits net income of C, D, and E, if any, for each of their respective periods, or the excess of the deficits, as the case may be; by dividing such excess by the number of days in the period January 1, 1937, through June 30, 1938; and by multiplying the resulting quotient by 365.

Example (3). The F, G, and H Corporations were in existence prior to 1936 and all computed their income tax on a fiscal year basis beginning March 1. On July 1, 1937, the F Corporation transfers its assets to the H Corporation in a Supplement A transaction and continues in existence with new assets acquired in exchange for the stock of H. On December 31, 1937, the H Corporation acquires the assets of the G Corporation in a Supplement A transaction and the G Corporation goes out of existence. The H Corporation changes to a calendar year basis beginning January 1, 1938. Assuming the figures shown below, the excess profits net income of the H Corporation for the base period year 1937 is \$365,000, computed as follows:

(1) Excess profits net income of—	
G, for period March 1, 1937–December 31, 1937-----	\$200, 000
H, for period March 1, 1937–December 31, 1937-----	186, 000
	<hr/>
(2) Aggregate excess profits net incomes for taxable years beginning in base period-----	\$386, 000
(3) Deficit in excess profits net income of F, for period March 1, 1937– July 1, 1937----- (deficit)---	80, 000
	<hr/>
(4) Excess of (2) over (3)-----	306, 000
	<hr/>
(5) Number of days in period March 1, 1937–December 31, 1937-----	306
(6) Excess profits net income placed on an annual basis (\$306,000 ÷ 306×365)-----	\$365, 000

Actual experience method.—The treatment under this method in cases in the first category applies only if it would be necessary under the daily average method to place the experience for the taxable years on an annual basis, as provided above under such method. Under the actual experience method, the actual excess profits net income (or deficit) of the corporations falling within this category for the period of 12 months beginning with the first day of the first taxable year in such base period year of any such component corporation shall be considered the total (or group) excess profits net income (or deficit) of such corporations for all their taxable years beginning in such base period year. If such 12-month period ends after May 31, 1940, or with or after a month in which a Supplement A transaction occurs in a taxable year of the acquiring corporation not beginning in such base period year, the experience after such date or for and after such month, whichever first occurs, shall not be used. In such case, there shall be added to the experience used the experience for as many consecutive months immediately preceding the beginning of the period of months used as will produce an aggregate period of 12 months. The first rule may be illustrated by example (2) above, where, under the actual experience method, the actual experience of the C, D, and E Corporations for the calendar year 1937 would be used. The second rule may be illustrated by example (3) above, if it is assumed that the first rule is not applicable by reason of another Supplement A transaction occurring in January 1938. In such case, under the actual experience method, the actual experience of the F, G, and H Corporations for the period of 12 months ending with December 31, 1937, is to be used.

(iii) *Second category.*—In the second category of cases under section 742(a), previously referred to, are all cases not falling within the first category and in which more than one taxable year of the acquiring corporation is, by reason of the last sentence of section 742(a), considered to begin in a base period year. Since such taxable years include taxable years of component corporations, a group excess profits net income or group deficit in excess profits net income, as the case may be, is determined for 12 months, in a manner similar to that in the first category above. However, in this second category not all of such components' first taxable years in the base period year begin on the same day as the acquiring corporation's first taxable year in such base period year, as in cases in the first category, and, therefore, the following adjustments are prescribed:

Daily average method.—Before applying the daily average method as in the first category, it is necessary in cases falling within this second category to develop conditions equivalent to those existing in the first category by adjusting the experience of any such components to

a period beginning on the same day as the beginning of the acquiring corporation's first taxable year in such base period year. This development and the adjustment to be made in this category under the daily average method are shown in the following examples:

Example (1). The A Corporation, which computed its income tax on the calendar year basis, was reorganized on July 1, 1936, in a Supplement A transaction into the B Corporation, which thereafter computed its income tax on a fiscal year basis beginning July 1 (until 1940, when it changed to a calendar year basis). The C Corporation which computed its income tax on a fiscal year basis beginning March 1 was in existence prior to 1936. The B Corporation acquired all of the assets of C in a Supplement A transaction on October 31, 1936. The excess profits net incomes (or deficits) of A and C for such of their taxable years in 1936 as begin before July 1, 1936, are to be adjusted to the period beginning July 1, 1936. Thus, the excess profits net income (or deficit) of A for the period of January 1, 1936–July 1, 1936, is to be divided by 182 (the number of days in the period January 1, 1936–July 1, 1936, inclusive) and the resulting quotient is to be multiplied by 1 (the number of days in the period beginning July 1 and in such taxable year of A beginning before July 1). The excess profits net income (or deficit) of C for the period March 1, 1936–October 31, 1936, is to be placed on the basis of the period July 1, 1936–October 31, 1936. Thus, if the excess profits net income of C for the period March 1, 1936–October 31, 1936, is \$49,000, such amount when adjusted will be \$24,600, computed by dividing \$49,000 by 245 (the number of days in the period March 1, 1936–October 31, 1936, inclusive) and by multiplying the resulting quotient of \$200 by 123 (the number of days in the period July 1, 1936–October 31, 1936, inclusive). The amount of \$24,600 is to be added to the amounts of excess profits net incomes (or deficits) of the A Corporation, as previously adjusted to the basis of 1 day, and of the B Corporation for the period July 1, 1936–June 30, 1937. No further adjustment is necessary in this case because the resulting sum is the excess profits net income of the acquiring corporation, B (including A and C), for a period of 12 months which is to be attributed to the base period year 1936.

Example (2). The D Corporation computes its income tax on a fiscal year basis beginning March 1. In 1937, it changed to a fiscal year beginning July 1 (which it continued to use until 1940 when it changed to a calendar year basis). D acquired the assets of corporations in Supplement A transactions as follows: the E Corporation, August 1, 1937; the F Corporation, December 31, 1937; and the G Corporation, May 31, 1938. Assume that the excess profits net incomes or deficits in excess profits net income for the pertinent periods are as fol-

lows (the first date at the left indicating the beginning of a taxable year):

D: March 1, 1937-June 30, 1937-----	\$12, 200
D: July 1, 1937-June 30, 1938-----	54, 700
E: February 1, 1937-August 1, 1937-----	18, 200
F: April 1, 1937-December 31, 1937-----	(deficit) 27, 500
G: May 1, 1937-April 30, 1938-----	36, 500
G: May 1, 1938-May 31, 1938-----	3, 100

The first day of the first taxable year of the acquiring corporation, D, beginning in 1937 is March 1, 1937. Therefore, the excess profits net income of the E Corporation for its taxable year beginning prior to such date (i. e., beginning on February 1, 1937) must be adjusted to a period beginning on March 1, 1937. The deficit in excess profits net income of the F Corporation for its taxable year beginning after such date (i. e., on April 1, 1937) must be adjusted to the period beginning March 1, 1937. Similarly, the first taxable year of the G Corporation to be taken into account begins after March 1, 1937 (i. e., on May 1, 1937) and, therefore, the excess profits net income for such year must be adjusted to the period beginning March 1, 1937. The following computations result:

E: Excess profits net income for taxable period February 1, 1937-August 1, 1937-----	\$18, 200
Divided by number of days in period (\$18,200÷182)-----	100
Multiplied by number of days in period March 1, 1937-August 1, 1937 (154×\$100)-----	15, 400
F: Deficit in excess profits net income for taxable period April 1, 1937-December 31, 1937-----	(deficit) 27, 500
Divided by number of days in period (\$27,500÷275)--- (deficit)	100
Multiplied by number of days in period March 1, 1937-December 31, 1937 (306×\$100)-----	(deficit) 30, 600
G: Excess profits net income for taxable period May 1, 1937-April 30, 1938-----	36, 500
Divided by number of days in period (\$36,500÷365)-----	100
Multiplied by number of days in period March 1, 1937-April 30, 1938 (426×\$100)-----	42, 600

The excess profits net income of the taxpayer for 1937 therefore will be \$73,000, computed in the same manner as in the first category, as follows:

(1) Excess profits net incomes for taxable years beginning in 1937 (the first taxable year in each case beginning on the same day, March 1, 1937):	
D Corporation (\$12,200+\$54,700)-----	\$66, 900
E Corporation-----	15, 400
G Corporation (\$42,600+\$3,100)-----	45, 700
Total -----	128, 000

- (2) Deficit in excess profits net income for taxable year beginning in 1937:

F Corporation (March 1, 1937–December 31, 1937)----(deficit) \$30,600

- | | |
|---|--------|
| (3) Excess of aggregate excess profits net incomes over deficit in excess profits net income----- | 97,400 |
| (4) Amount in (3) divided by number of days in total period (March 1, 1937–June 30, 1938) (\$97,400÷487)----- | 200 |
| (5) Amount in (4) multiplied by number of days in 1937 (\$200×365)--- | 73,000 |

Actual experience method.—Under this method, the actual excess profits net income (or deficit) of the corporations falling within this category for the period of 12 months beginning with the first day of the first taxable year in such base period year of the acquiring corporation shall be considered the total (or group) excess profits net income (or deficit) of such corporations for all their taxable years beginning in such base period year. If such 12-month period ends after May 31, 1940, or with or after a month in which a Supplement A transaction occurs in a taxable year of the acquiring corporation not beginning in such base period year, the experience after such date or for and after such month, whichever first occurs, shall not be used. In such case, there shall be added to the experience used the experience for as many consecutive months immediately preceding the beginning of the period of months used as will produce an aggregate period of 12 months.

The first rule in this category under the actual experience method may be illustrated by example (1) above in this category, where, under the actual experience method, the total (or group) excess profits net income (or deficit) of the A, B, and C Corporations, for the base period year 1936, would be determined from their actual experience for the 12-month period beginning with July 1, 1936. It will be noted that under this rule no excess profits net income is included with respect to A for the period January 1, 1936–June 30, 1936, or with respect to C for the period March 1, 1936–June 30, 1936. The same rule may be applied similarly to example (2) above in this category.

(4) *Application for use of actual experience method.*—If the taxpayer desires to use the actual experience method for any base period year, as prescribed in this subdivision, it shall file with its return or claim in which it determines its excess profits tax under the provisions of Supplement A a statement showing the computations of its total (or group) excess profits net income (or deficit) for the taxable years in each of such base period years, together with such explanation as it believes necessary to establish that the total (or group) excess profits net income under this method more clearly reflects actual group excess profits net income (or deficit) for such base period years than does the

daily average method. If the total (or group) excess profits net income for any such base period year is finally determined under the actual experience method, or if permission is granted by the Commissioner before a final determination by the Commissioner, the taxpayer, in computing its excess profits tax under Supplement A in any return required to be filed thereafter, may, without the filing of such statement but with reference to the statement as to which the final determination had been made or permission given, use such total (or group) excess profits net income, except as further adjustment may be necessary in the case of the taxpayer under the rules of section 711(b) (1) (K) (iii).

(b) *Limitation under section 742(f) (1) in case of stock acquisition.*—Section 742(f) (1) is designed to prevent certain duplications in base period income and transferred capital additions and reductions in certain cases where after December 31, 1935, assets of the taxpayer (or of a corporation which later becomes its component) are transferred for stock in another corporation which later becomes a component of the taxpayer. Section 742(f) (1) contemplates that, after the Supplement A transaction, the part of the component's base period experience which is attributable to the acquired stock and which occurred before the acquisition of its stock shall under regulations prescribed herein be excluded in determining the taxpayer's Supplement A average base period net income. The adjustment under section 742(f) (1) shall be made in the cases described in this subdivision, and in all other cases to which section 742(f) (1) may be applicable, in a manner consistent with the principles underlying such described cases. Except to the extent duplication of experience occurs, no adjustment is necessary under section 742(f) (1) with respect to stock which the acquiring corporation acquired directly from the corporation whose stock was acquired.

The rules for the application of section 742(f) (1) for the purpose of computing Supplement A average base period net income under the general average method and under the growth formula (see section 35.742-2) are set forth in this subdivision. As to determination of excess profits net income for such purpose under the limitations of section 742(f) (1) for any "vacant" base period year, see section 35.742-4. As to adjustment of daily capital addition or reduction in case of such stock acquisition prior to the Supplement A transaction, see section 35.743-1(b).

The general application of section 742(f) (1) may be illustrated by the following examples:

Example (1). The A and B Corporations were in existence on January 1, 1936, and have at all times made their income tax returns on the calendar year basis. On January 1, 1937, A purchased for

cash all of the stock in B from the stockholders of B. On December 31, 1939, A acquired all of the assets of B in a Supplement A transaction. In determining A's Supplement A average base period net income, the excess profits net income of A for 1936, 1937, 1938, and 1939 and of B for 1937, 1938, and 1939 will be included, and that of B for 1936 will be excluded.

Example (2). The C and D Corporations were in existence on January 1, 1936, and have at all times made their income tax returns on the calendar year basis. On January 1, 1941, C acquired for cash all of D's stock from D's stockholders. On December 31, 1941, C acquired all of the assets of D in a Supplement A transaction. In such a case, section 742(f)(1) requires the exclusion of D's entire base period experience in computing C's Supplement A average base period net income. (D's capital additions and reductions in 1940 are also required to be excluded. See section 35.743-1(b).)

In cases in which the taxpayer does not at one time or at any time prior to the Supplement A transaction acquire all of the other corporation's stock, only that part of the component's base period experience before the acquisition which is attributable to the stock so acquired is to be excluded in computing the taxpayer's Supplement A average base period net income. In cases in which the component had only one class of stock outstanding at the time of the Supplement A transaction, the portion of the component's experience to be excluded under section 742(f)(1) with respect to any part of the base period is an amount which bears the same ratio to the whole of the component's experience for such part as the number of shares of such stock acquired by the taxpayer after such part, and not disposed of prior to the Supplement A transaction, bears to the aggregate number of such shares outstanding at the time of the acquisition of such stock. If any of such shares of stock, whether acquired before or after the beginning of the base period, were disposed of prior to the Supplement A transaction, the shares disposed of shall, for the purpose of this computation, be deemed to be those most recently acquired. The adjustment under section 742(f)(1) in cases described in this paragraph may be illustrated by the following examples:

Example (1). The E and F Corporations were in existence on January 1, 1936, and have at all times made their income tax returns on the calendar year basis. The outstanding capital stock of F consists of 1,000 shares, all of one class. On January 1, 1937, E purchased for cash 510 shares of such stock from the stockholders of F. On December 31, 1941, E issued stock in exchange for the balance of the stock of F and acquired all of the assets of F in a Supplement A transaction. For the purpose of computing E's Supplement A average base period net income for the tax for 1942 and thereafter, 51

percent of F's excess profits net income or deficit in excess profits net income for 1936 is to be excluded under section 742(f)(1).

Example (2). Assume the same facts as in example (1) just above and the additional fact that on January 1, 1938, E purchased for cash 340 additional shares of F from the stockholders of the latter, making its total stock holdings in F 850 shares prior to the issuance of its (E's) own stock for the balance of the stock of F and prior to the Supplement A transaction. In such case, there shall be excluded under section 742(f)(1) an amount equal to 85 percent (51 percent plus 34 percent) of F's excess profits net income, or deficit, for 1936 and 34 percent of its excess profits net income, or deficit, for 1937.

Example (3). Assume the same facts as in example (2) just above and the additional fact that on January 1, 1939, E sold 350 shares of the F Corporation stock to various individuals. Accordingly, immediately prior to the issuance of its (E's) own stock for the balance of the stock of F and prior to the Supplement A transaction, E will own 500 shares of the stock of F acquired for assets since December 31, 1935. Therefore, 50 percent of F's excess profits net income, or deficit, for 1936 will be excluded under section 742(f)(1). No portion of such experience for 1937, 1938, or 1939 will be excluded since the 350 shares sold are presumed to include all of the 340 shares acquired on January 1, 1938 (as in example (2)), and only 10 shares of the 510 shares acquired on January 1, 1937.

Example (4). Assume the same facts as in examples (1), (2), and (3), except that the original acquisition of 510 shares of F's stock occurred prior to January 1, 1936. In such case, no adjustment will be necessary under section 742(f)(1) because the 350 shares disposed of on January 1, 1939, are deemed to be out of the most recently acquired shares, including in this case all of the shares acquired since December 31, 1935, that is, the 340 shares acquired on January 1, 1938.

Where the corporation whose stock is acquired has at the time of such acquisition more than one class of stock outstanding and the taxpayer does not, prior to the Supplement A transaction, acquire all of the stock of all classes for assets (other than its own stock), the base period experience of the component which is to be excluded under section 742(f)(1) must be determined upon the basis of the earnings which may be attributed to each class of stock. Where preferred stock is nonvoting and is also limited and preferred as to dividends, the base period excess profits net income may be allocated first to the preferred stock on the basis of the prescribed dividend rate per share. If the only other class is common stock, the balance of such excess profits net income may be allocated to the common

stock. The portion of such base period excess profits net income which is attributable to the stock owned by the acquiring corporation is that portion of such base period excess profits net income allocated to the class to which such stock belongs proportionate to the number of shares of such class acquired by the acquiring corporation after December 31, 1935. This rule may be illustrated by the following example:

Example. The G Corporation was in existence on January 1, 1936, and has at all times made its income tax returns on the calendar year basis. It has had outstanding at all times the following shares:

5,000 shares of nonvoting preferred stock of a par value of \$100 per share, limited and preferred as to dividends to the extent of \$6 per share annually.

10,000 shares of no-par value common stock possessing sole voting power.

On January 1, 1938, the H Corporation acquired for cash 6,000 shares of G's common stock from the stockholders of G. The excess profits net income of G for 1936 and 1937 was \$100,000 each year. Of this amount, \$30,000, representing the prescribed dividend rate of \$6 a share on 5,000 shares, is allocable to the preferred stock. Of the balance of \$70,000 which is allocable to the common stock, 60 percent (the ratio of the 6,000 shares of common stock acquired by H since December 31, 1935, to the total of 10,000 shares of such stock outstanding), or \$42,000, will be considered attributable to the stock so acquired by H. Therefore, if H subsequently acquired all of the assets of G in a Supplement A transaction (no stock of G having been purchased or disposed of in the interval), \$42,000 of G's excess profits net income for 1936 and 1937 is to be excluded under section 742(f)(1) in computing the Supplement A average base period net income of H. If G had a deficit in excess profits net income for either 1936 or 1937, or for both, such deficit would be considered attributable solely to the common stock for purposes of determining the portion to be excluded under section 742(f)(1).

The acquisition of stock by the acquiring corporation may occur on a day in a taxable year of the acquiring corporation other than the first day of such year, as in the cases previously discussed in this subdivision. If such stock acquisition occurred in a taxable year of the acquiring corporation beginning in a base period year, the amount of the component's excess profits net income (or deficit) for its taxable year or years beginning in such base period year to be excluded shall be determined upon the basis of the ratio which the number of days in such acquiring corporation's taxable year or years up to the date of such stock acquisition bears to the total number of days in such acquiring corporation's taxable year or years. If the

stock acquisition occurred in an excess profits tax taxable year for which the tax is being computed and later in such year the Supplement A transaction occurred, the amount of the component's base period experience to be excluded under section 742(f)(1) shall be determined upon the basis of the ratio which the number of days in such excess profits tax taxable year of the acquiring corporation up to the date of such stock acquisition bears to the total number of days in such year. This rule may be illustrated by the following examples (in which it is assumed that the base period years are calendar years):

Example (1). The J Corporation purchased for cash all of the stock of the K Corporation from the latter's stockholders on July 2, 1936, and on December 31, 1942, acquired the assets of the K Corporation in a Supplement A transaction. The J Corporation made its income tax returns on the calendar year basis.

(i) If the K Corporation made its income tax returns on the calendar year basis, one-half of K's excess profits net income or deficit in excess profits net income (the ratio which the number of days in the period January 1 through July 1, 1936 (183 days), bears to the total number of days in 1936 (366)) is to be excluded under section 742(f)(1) in computing J's Supplement A average base period net income.

(ii) If the K Corporation made its income tax returns on the basis of a fiscal year ending July 31, the excess profits net income or deficit in excess profits net income of K for the fiscal year ending July 31, 1937, would otherwise be includible in the group excess profits net income (or deficit) for 1936. Although the stock acquisition occurred before the beginning of such taxable year of K (but after December 31, 1935), nevertheless one-half of such experience of K for its taxable year ended July 31, 1937, is to be excluded under section 742(f)(1).

(iii) If the K Corporation had made its income tax returns on the basis of the fiscal year ending July 31 and then received permission to make its income tax returns on the calendar year basis after the close of its taxable year ending July 31, 1936, K has a short taxable year in 1936 for the period August 1 through December 31, 1936. The excess profits net income or deficit in excess profits net income for such short taxable year is to be adjusted to represent 12 months' experience, as provided in subsection (a) of this section, and of the amount thus determined, one-half is to be excluded under section 742(f)(1) in computing the group excess profits net income (or deficit) for 1936.

(iv) If the K Corporation had made its income tax returns on a calendar year basis and then received permission to make such re-

turns on the basis of a fiscal year beginning August 1, 1936, the experience for the two taxable years, January 1, 1936, through July 31, 1936, and August 1, 1936, through July 31, 1937, are to be adjusted to represent 12 months' experience, as provided in subsection (a) of this section. Of the amount thus determined, one-half is to be excluded under section 742(f)(1) in computing the group excess profits net income (or deficit) for 1936.

Example (2). Assume the same facts as in example (1) (including the variations in (i), (ii), (iii), and (iv) thereof) except that J, the acquiring corporation, received permission to make its income tax returns on a fiscal year basis beginning May 1, 1936, and filed its returns on such basis until 1940 when it changed back to a calendar year basis, and that J purchased for cash all of the stock of K from the latter's stockholders on August 31, 1936 (instead of July 2, 1936, as in example (1)). In such case, J has two taxable years beginning in 1936, the taxable year January 1, 1936–April 30, 1936, and the taxable year May 1, 1936–April 30, 1937. The excess profits net income (or deficit) for such two taxable years is to be placed on an annual basis as provided in subsection (a) of this section. Nevertheless, one-half of the experience of the K Corporation is to be eliminated in computing group excess profits net income for 1936, just as in example (1). This is determined from the ratio of the number of days in such taxable years prior to August 31, 1936 (243, the number of days in the period January 1, 1936–August 30, 1936), to the total number of days in both taxable years (486, the number of days in the period January 1, 1936–April 30, 1937).

Example (3). The L Corporation, which makes its income tax returns on the calendar year basis, on March 2, 1944, purchases for cash all of the stock of the M Corporation from the stockholders of M. On July 2, 1944, L acquires all of the assets of M in a Supplement A transaction. In such case, one-sixth (the ratio of the number of days in the period January 1, 1944–March 1, 1944, 61 days, to the total number of days in 1944, 366 days) of M's experience for each base period year is to be eliminated under section 742(f)(1) in computing the Supplement A average base period net income of L for the purpose of the excess profits credit to be applied in computing the tax for 1944. For further limitation upon the average base period net income computed after this limitation, see section 742(f)(2) and subsection (c) of this section. In computing the Supplement A average base period net income of L for the purpose of the tax for 1945, the entire base period experience of M is to be eliminated. As to limitations upon the use of M's capital additions and reductions, see section 35.743-1(b).

Section 742(f)(1) does not apply where stock of one corporation is acquired by another corporation solely in exchange for the latter's stock. In case stock is acquired in exchange partly for the acquiring corporation's own stock and partly for other property, section 742(f)(1) is applicable only to the extent that the acquisition is attributable to such other property. Stock which has, in the hands of the taxpayer, a basis determined with reference to the basis of stock previously acquired by the issuance of the taxpayer's own stock shall be considered as having been acquired in consideration of the issuance of the taxpayer's own stock. These rules may be illustrated by the following examples:

Example (1). Corporation N acquires, after December 31, 1935, stock in Corporation O in exchange solely for the stock of N. In a subsequent nontaxable reorganization, N receives new shares of O in exchange for the original shares. If the new shares take the basis of the original shares, the new shares are considered, for the purposes of section 742(f)(1), to have been acquired for the stock of N, and such section is inapplicable.

Example (2). The P and Q Corporations were in existence prior to January 1, 1936. On January 1, 1937, P acquired all the stock of Q from the latter's stockholders in exchange for stock of P. On January 1, 1938, in a nontaxable reorganization, the X Corporation was organized and acquired all the assets of Q in exchange for its (X's) stock. In connection with this reorganization, P exchanged its stock in Q for the stock in X, and Q was dissolved. On December 31, 1939, P acquired all of the assets of X in a Supplement A transaction. For the purposes of section 742(f)(1), the stock in X acquired by P is regarded as having been acquired for its own stock and, therefore, no adjustment is required under section 742(f)(1).

Section 742(f)(1) also applies in cases in which a component (referred to as the "first corporation") of the taxpayer transfers assets for the stock in a corporation (referred to as the "second corporation") and both corporations become components of the taxpayer (the second corporation becoming a component either directly or as a component of the first corporation). The statute also applies to any other corporation which becomes a component of the taxpayer and which at the time of a stock acquisition by the taxpayer or first corporation (under the circumstances described in section 742(f)(1) (A) or (B)) was connected, directly or indirectly, through stock ownership with the corporation the stock of which was acquired. In the case of such a corporation connected through stock ownership, the statute applies regardless of the manner of acquisition of the stock of such connected corporation held at such time

(for example, whether or not acquired for a consideration other than the issuance of stock). The statute also applies regardless of the date before such time that the corporation holding such stock, directly or indirectly, acquired such stock of such connected corporation. That is, it is immaterial whether the stock of such connected corporation held at such time was acquired before, on, or after December 31, 1935, as long as such stock was acquired before the time the acquisition of stock of the corporation to which it was so connected occurred in a transaction described in section 742(f) (1) (A) or (B). In the case of any such corporation connected through stock ownership at such time, the amount of its excess profits net income, or deficit, which is to be eliminated under section 742(f) (1) is to be determined by reference to that part of such amount which is attributable to the period prior to such time and which is attributable to the stock held, directly or indirectly, at such time, and not disposed of thereafter, by the corporation the stock of which was acquired at such time by the taxpayer or first corporation. Such experience to be eliminated is to be attributed to the period prior to such time and to such stock so held upon the basis of the principles previously stated in this subsection. To the extent that the stock of a corporation (later to become a component) was not so held at such time but was subsequently acquired, after December 31, 1935, by the taxpayer or another corporation (a first or second corporation), for assets of the latter, the base period experience of such corporation is to be excluded in accordance with the rules previously set forth in this subsection for excluding the experience of a component when the latter's stock is acquired after December 31, 1935, for assets by the taxpayer. The application of these rules in such cases is illustrated by the following examples:

Example (1). The R, S, T, and U Corporations were in existence prior to January 1, 1936, and at all times made their income tax returns on the calendar year basis. The S Corporation came into existence on January 1, 1935, and issued all of its stock to the stockholders of the T Corporation for the stock of the latter. On January 1, 1937, the S Corporation purchased for cash all of the stock of the U Corporation from stockholders of the U Corporation. On January 1, 1938, the R Corporation purchased for cash all of the stock of S from the latter's stockholders. On December 31, 1939, S acquired all of the assets of the T and U Corporations in Supplement A transactions. On December 31, 1940, R acquired all of the assets of S in a Supplement A transaction. In computing the Supplement A average base period net income of R, there is to be excluded under section 742(f) (1) the experience of S, T, and U for 1936 and 1937.

Example (2). Assume the same facts as in example (1) above except that the S Corporation made the acquisition of the U Corporation's stock on January 1, 1939 (after the acquisition by R of the stock of S). In such case, there is to be excluded under section 742(f) (1) the experience of both S and T for 1936 and 1937 and the experience of U for 1936, 1937, and 1938.

Example (3). The W, X, Y, and Z Corporations were all in existence in 1935 and at all times made their income tax returns on the calendar year basis. In July, 1935, the X Corporation acquired 50 percent of the stock of Y from the stockholders of the latter. On January 1, 1937, the W Corporation acquired for assets (other than its own stock) all of the stock of the X Corporation from the latter's stockholders. On January 1, 1938, the X Corporation acquired for assets (other than its own stock) the remaining 50 percent of the stock of the Y Corporation from other stockholders of the latter. On January 1, 1939, the Y Corporation acquired for assets (other than its own stock) all of the stock of the Z Corporation from the latter's stockholders. On January 31, 1939, the X Corporation acquired all of the assets of the Y Corporation in a Supplement A transaction and on November 30, 1939, the W Corporation acquired all of the assets of the X Corporation in a Supplement A transaction. On December 31, 1939, the W Corporation acquired all of the assets of the Z Corporation in a Supplement A transaction. In computing the Supplement A average base period net income of the W Corporation, there is to be excluded all of the experience of the X Corporation for 1936. There is also to be excluded all of the experience of the Y Corporation for 1936, one half of such experience being excluded because of the 50 percent ownership of its stock by the X Corporation at the time the stock of X was acquired by W and the other half being excluded because of the subsequent acquisition of the other 50 percent of the stock of Y by the X Corporation for the assets of the latter. One-half of the experience of the Y Corporation for 1937 is also to be excluded because of the acquisition of one-half of its stock on January 1, 1938, by the X Corporation for assets of the latter. The entire experience of the Z Corporation for 1936, 1937, and 1938 is to be excluded because of the acquisition from the stockholders of Z on January 1, 1939, of the stock of Z for assets of the Y Corporation.

(c) *Limitation under section 742(f) (2) in case of Supplement A transaction in excess profits tax taxable year.*—Section 742(f) (2) imposes a limitation in case a corporation becomes an acquiring corporation in an excess profits tax taxable year. In such case only a proportionate amount of the excess profits net income or deficit in excess profits net income of any component corporation acquired upon such transaction may be included in computing the taxpayer's average

base period net income for purposes of the excess profits credit for such taxable year. The amount thereof which may be included with respect to each base period year is an amount which bears the same ratio to the total amount of the excess profits net income or deficit in excess profits net income of such component corporation otherwise includible in such base period year as the number of the days in the taxable year after the acquisition takes place bears to the total number of days in the taxable year. In the computation of the excess profits credit based on income for subsequent taxable years, the average base period net income shall, unless otherwise limited, reflect the full amount of the base period excess profits net income or deficit in excess profits net income of such component corporation. Section 742(f)(2) may be illustrated by the following example:

Example. - On October 19, 1942, the X Corporation acquires all of the assets of the Y Corporation in a transaction described in section 740(a). Both the X Corporation and the Y Corporation were in existence on January 1, 1936, and both corporations have always filed their income tax returns on the calendar year basis. The Y Corporation had an excess profits net income of \$100,000 for the calendar year 1936, a deficit in excess profits net income of \$10,000 for the calendar year 1937, an excess profits net income of \$70,000 for the calendar year 1938, and an excess profits net income of \$50,000 for the calendar year 1939. In computing its average base period net income for purposes of the excess profits credit for the calendar year 1942, the X Corporation may include only one-fifth (i. e., 73/365) of the above amounts, i. e., \$20,000 for 1936, minus \$2,000 for 1937, \$14,000 for 1938, and \$10,000 for 1939. In computing the excess profits credit for 1943 and subsequent years, however, the X Corporation may include the full amount of the base period excess profits net income and deficit in excess profits net income of the Y Corporation.

A similar limitation applies in the case of a component corporation for the purpose of computing its excess profits credit for a taxable year of such component beginning after December 31, 1941, and in which the Supplement A transaction occurs. See section 740(c)(2). In such case, however, the proportionate amount of the average base period net income or Supplement A average base period net income, as the case may be, to be taken into account for the purpose of the component corporation's excess profits credit for such taxable year is in the ratio which the number of days in such taxable year before the day after the transaction bears to the total number of days in such taxable year. Thus, in the above example, in computing the average base period net income or the Supplement A average base period net income, as the case may be, of the Y Corporation (assuming it continues in existence after the transaction) for the purpose of its excess profits credit for 1942, the amounts to be taken into account will be

\$80,000 for 1936, minus \$8,000 for 1937, \$56,000 for 1938, and \$40,000 for 1939.

SEC. 35.742-4 COMPUTATION OF EXCESS PROFITS NET INCOMES FOR BASE PERIOD YEARS DURING WHICH NEITHER TAXPAYER NOR ANY COMPONENT CORPORATION WAS IN EXISTENCE—APPLICABLE UNDER BOTH GENERAL AVERAGE METHOD AND INCREASED EARNINGS METHOD.—

(a) *General*.—The base period of an acquiring corporation is composed of four successive 12-month periods, whether or not there is one or more of such base period years during the whole of which neither the acquiring corporation nor any of its component corporations was in existence (although, of course, either the acquiring corporation or one of its components must have been actually in existence prior to January 1, 1940; in order for Supplement A to apply). Section 742(e)(1) provides a method for determining the excess profits net incomes of the several corporations for a base period year during which none of such corporations was actually in existence.

In the case of an acquiring corporation which acquired the assets of its component corporation in a Supplement A transaction occurring before the beginning of such acquiring corporation's last taxable year which began in 1939, the following steps are required for the computation of its excess profits net income for a base period year during which neither the acquiring corporation nor the component corporation was at any time in existence:

(1) The daily invested capital of the acquiring corporation for the first day of its first excess profits tax taxable year is determined.

(2) There is determined the percentage of such daily invested capital which would be applicable under section 720 in reduction of the average invested capital of the acquiring corporation on account of inadmissible assets for its last taxable year beginning in 1939, in the same manner as if section 720 had been applicable to such year.

(3) The amount determined under (1) is reduced by an amount equal to the same percentage of such daily invested capital as the percentage determined under (2).

(4) 8 percent of the amount found under (3) is determined.

The amount determined under (4) is the excess profits net income of the acquiring corporation for such base period year. In such case, no excess profits net income is to be built up for the component corporation for such base period year.

In the case of an acquiring corporation which acquired a component corporation in the acquiring corporation's last taxable year beginning in 1939, the excess profits net income of the acquiring corporation for a base period year during which neither of such corporations was at

any time in existence is determined in the manner prescribed in the preceding paragraph, except that, in determining the percentage figure under section 742(e) (1) (B), the acquiring corporation is considered to have held the admissible and inadmissible assets held by the component corporation (and at the time so held by it) immediately prior to the transaction and during any part of such taxable year of the acquiring corporation. In such case, no excess profits net income is to be built up for the component corporation for such base period year. In case the Supplement A transaction by which a corporation became a component corporation of its acquiring corporation occurred in the last taxable year of such component corporation beginning in 1939 but on a day in a taxable year of such acquiring corporation beginning in 1940, the following steps are required for the computation of the excess profits net income with respect to such component corporation for a base period year during which neither of such corporations was at any time in existence:

(1) The daily invested capital of the component corporation for the day of the transaction is determined.

(2) There is determined the percentage of such daily invested capital which would be applicable under section 720 in reduction of the average invested capital of the component corporation on account of inadmissible assets for the 12-month period ending with the day preceding the day of the transaction, in the same manner as if such 12-month period constituted a taxable year and section 720 had been applicable to such taxable year.

(3) The amount determined under (1) is reduced by an amount equal to the same percentage of such daily invested capital as the percentage determined under (2).

(4) 8 percent of the amount found under (3) is determined. The amount determined under (4) is the excess profits net income of the component corporation for such base period year.

In the case of an acquiring corporation which acquired all of the assets of a component corporation after the beginning of both corporation's first excess profits tax taxable year, the excess profits net income for each corporation for a base period year during which neither was at any time in existence is determined in the manner prescribed in the second paragraph of this subsection, the amount for the component being determined under such paragraph in the same manner as if it were an acquiring corporation.

The application of the foregoing rules under section 742(e) (1) and (2) may be illustrated by the following examples (examples (1) and (2) covering subsection (e) (1) in general; example (3) dealing with the application of subsection (e) (1) (B), and example (4) covering subsection (e) (2)):

Example (1). The F Corporation, on the calendar year basis, was organized on January 1, 1937. The G Corporation was organized on December 1, 1936. It has at all times used a fiscal year ending November 30. On January 1, 1942, the F Corporation acquired the properties of G Corporation in a Supplement A transaction. Since the G Corporation was actually in existence in the base period year 1936, section 742(e)(1) is not applicable and therefore the F Corporation will not be permitted to build up any income for 1936.

Example (2). The H Corporation and the J Corporation came into existence on January 1, 1937, and January 1, 1938, respectively. Both corporations have at all times been on the calendar year basis. On January 1, 1942, the H Corporation acquired all of the assets of the J Corporation in a Supplement A transaction. Although the J Corporation was not actually in existence in 1937, the H Corporation was actually in existence in such year. Therefore, no excess profits net income may be built up with respect to such year. However, since neither corporation was actually in existence in 1936, income may be built up for such year. Such income is the excess profits net income built up for each corporation for 1936. In the case of each corporation the built up income is an amount equal to 8 percent of the excess of—

- (i) the daily invested capital of the corporation for January 1, 1940, over
- (ii) an amount which is the same percentage of such capital as the percentage determined as provided in section 742(e)(1)(B) under the rules of section 720 by reference to its last taxable year beginning in 1939.

Example (3). The M Corporation came into existence on November 1, 1937. It has at all times used a fiscal year ending October 31. The N Corporation, on the calendar year basis, came into existence on January 1, 1937. On October 1, 1940, the M Corporation acquired all of the assets of the N Corporation in a Supplement A transaction. Here the date of the transaction fell within the M Corporation's last taxable year beginning within 1939, but within the N Corporation's first excess profits tax taxable year. In building up excess profits net income for 1936 (the year in which neither corporation was in existence), there is taken into account only the M Corporation's daily invested capital—for November 1, 1940. The N Corporation's daily invested capital is reflected in the M Corporation's daily invested capital for such day. In determining the percentage figure as provided in section 742(e)(1)(B) under the rules of section 720 by reference to its taxable year ended October 31, 1942 (to be used in reducing the M Corporation's daily invested capital), the M Corporation is treated as if it had held the admissible and inadmissible assets

which the N Corporation held during the period November 1, 1939, through September 30, 1940.

Example (4). The K Corporation, on the calendar year basis, came into existence on January 1, 1937. The L Corporation was organized on July 1, 1937. It has at all times used a fiscal year ending June 30. On March 1, 1940, the K Corporation acquired all of the assets of the L Corporation in a Supplement A transaction. The date of the transaction fell, accordingly, within the K Corporation's first excess profits tax taxable year, but within the L Corporation's last taxable year beginning in 1939. In building up excess profits net income for each corporation for 1936 (the year in which neither corporation was in existence), there is taken into account the K Corporation's daily invested capital for January 1, 1940, and the L Corporation's daily invested capital for March 1, 1940.

(b) *Limitations.*—The determination of excess profits net income for vacant base period years is subject to each of the following limitations:

(1) Section 742(e)(3) acts as a limitation on subsections (e) (1) and (2). The cases generally covered by it are those in which there was cross-ownership of stock between such corporations prior to the Supplement A transaction, but it also covers cases where property or stock of either corporation has been transferred to the other as paid-in surplus or as a contribution to capital. As such, the primary purpose of section 742(e)(3) is to prevent doubling up on the factor of the daily invested capital carried into the first excess profits tax taxable year as the factor upon which the constructive income allowed under subsections (e) (1) and (2) is computed.

Briefly stated, section 742(e)(3) provides that in case any corporation described in section 742(e)(1) owned stock in any other such corporation on the first day of such owning corporation's first excess profits tax taxable year beginning in 1940, then the invested capital factor, upon which the constructive income allowed under section 742(e)(1) and (2) with respect to such corporations is computed, shall be adjusted to such extent as may be necessary to prevent such constructive income from reflecting money or property paid in by either of such corporations to the other for stock or as paid-in surplus or as a contribution to capital; or from reflecting stock of either paid in for stock of the other or as paid-in surplus or as a contribution to capital. For this purpose, stock in either such corporation which has in the hands of the other corporation a basis determined with reference to the basis of stock previously acquired by the issuance of such other corporation's own stock shall be deemed to have been paid in for the stock of such other corporation. For certain limitations in other cases of cross-ownership of stock not

covered by section 742(e)(3), see section 742(f)(1) and section 35.742-3(b).

The following example illustrates the nature of the adjustment to be made in cases to which section 742(e)(3) applies:

Example. The O Corporation and the P Corporation are both on the calendar year basis. The O Corporation came into existence on January 1, 1938. The P Corporation was organized on December 31, 1938, and on that date it issued all of its capital stock to the O Corporation in exchange for assets of the latter. The O Corporation holds this stock continuously until December 31, 1941, at which time it acquires the P Corporation in a transaction described in section 740(a)(2). Each corporation is entitled under section 742(e)(1) to a constructive income for the years 1936 and 1937. This constructive income is computed at 8 percent of the excess of its daily invested capital for January 1, 1940, over an amount which is the same percentage of such invested capital as the percentage determined under section 720—generally known as the inadmissible asset ratio. In the event that the reduction under section 720 in the O Corporation's daily invested capital for January 1, 1940, attributable to the stock in P is an amount which is less than the basis of such stock to the O Corporation, a further adjustment shall be made in its invested capital in order to eliminate duplication of the same invested capital. Assuming that the basis of the P stock to the O Corporation under section 718(a)(2) is \$50,000; that on December 31, 1938, and December 31, 1939, it owned shares in other domestic corporations having a basis of \$10,000; and that the O Corporation's daily invested capital for January 1, 1940, is \$450,000 (section 742(e)(1)(A)), the computation of the adjustment required under section 742(e)(3) may be illustrated as follows:

(i) Total inadmissible assets (based upon computation under section 720).....	\$60,000
(ii) Total admissible and inadmissible assets computed under section 720 with reference to the aggregate of both classes of assets (section 35.720-1).....	600,000
(iii) Percentage which the total inadmissible assets is of total admissible and inadmissible assets.....	percent 10
(iv) Daily invested capital of the O Corporation for January 1, 1940, as stated above.....	450,000
(v) Amount of reduction in the O Corporation's daily invested capital for January 1, 1940, for inadmissible assets under section 742(e)(1)(B)—10 percent of item (iv).....	45,000
(vi) Reduction in the daily invested capital of the O Corporation for January 1, 1940, which is attributable to the stock in the P Corporation ($\frac{50,000}{60,000} \times 45,000$).....	37,500
(vii) Basis of the P Corporation stock to the O Corporation.....	50,000

(viii) Adjustment to be made in the O Corporation's daily invested capital for January 1, 1940, in order to arrive at the invested capital factor under section 742(e) (3) upon which constructive income is computed.....	\$12, 500
(ix) Daily invested capital for January 1, 1940.....	450, 000
Adjustment for inadmissibles under section 720 (item (vi) above).....	\$45, 000
Adjustment under section 742(e) (3).....	12, 500
	<hr/> 57, 500
(x) Invested capital as adjusted under section 742(e) (3) upon which constructive income of the O Corporation is computed.....	392, 500

(2) Section 742(f) (1) requires the exclusion from Supplement A average base period net income of all or a part of the base period experience of a component which is determined under section 742(e) for vacant base period years, if the taxpayer (or any corporation which later became a component of the taxpayer) acquired for assets (other than its own stock) the stock of such component after such vacant base period year. See section 35.742-3(b).

The adjustment necessary under section 742(f) (1) where excess profits net income for vacant base period years would otherwise be determined under section 742(e) is illustrated by the following example:

Example. The A and B Corporations were both organized on January 1, 1937, and have at all times made their income tax returns on the calendar year basis. On January 1, 1938, A purchased for cash all of the stock of B from the latter's stockholders. On December 31, 1940, A acquired all of the assets of B in a Supplement A transaction. Under section 742(e), the excess profits net incomes of A and B for 1936 are to be determined separately. However, by reason of section 742(f) (1), the experience of B prior to January 1, 1938, is to be excluded, and therefore no excess profits net income need be determined for B for 1936.

The application of section 742(f) (1) in other cases described in section 742(e) but not illustrated above is to be determined in accordance with the above principles and those of section 35.742-3(b).

SEC. 743. NET CAPITAL CHANGES. [ADDED BY SEC. 201, SECOND REV. ACT 1940; AMENDED BY SEC. 4, EXCESS PROFITS TAX AMENDMENTS 1941, AND BY SEC. 228(d), REV. ACT 1942.]

(a) **TAXPAYER USING THIS SUPPLEMENT.**—For the purposes of section 713(g), if the transaction which constitutes the taxpayer an acquiring corporation occurs in a taxable year of the taxpayer which begins after December 31, 1939, and the taxpayer's average base period net income is computed under section 742, the following rules shall apply in computing the daily capital addition and reduction of the taxpayer for each day after such transaction:

(1) The transferred capital addition or reduction of the component corporation shall be treated as if it were a capital addition or reduction, as the case may be, of the taxpayer.

(2) The transferred capital addition of the component corporation shall be its daily capital addition as of the time immediately before the transaction (computed under section 713(g), but without regard to its reduction under the fourth sentence of paragraph (3) on account of excluded capital, but with the application of paragraph (6) of this subsection).

(3) The transferred capital reduction of the component corporation shall be its daily capital reduction as of the time immediately before the transaction (computed under section 713(g) but with the application of paragraph (7) of this subsection).

(4) In computing the daily capital addition of the taxpayer, money or property paid in to the taxpayer by any of its component corporations, and property consisting of stock in any such component corporation paid in by shareholders of such component corporation, shall be disregarded.

(5) In computing the daily capital reduction of the taxpayer, distributions by the taxpayer to any of its component corporations not out of earnings and profits shall be disregarded.

(6) In computing the transferred capital addition of the component corporation, money or property paid in to such component corporation by the taxpayer or any other component corporation and property consisting of stock in the taxpayer or any other component corporation paid in by shareholders of the taxpayer or other component corporation, shall be disregarded.

(7) In computing the transferred capital reduction of the component corporation, distributions by such component corporation to the taxpayer or any other component corporation shall be disregarded.

(8) The daily capital addition of the taxpayer to which any amount is added under paragraph (1) shall be the amount thereof computed before its reduction under the fourth sentence of section 713(g) (3) on account of excluded capital.

(b) **RULE WHERE ACQUIRING CORPORATION IS COMPONENT OF TAXPAYER.**—In cases where an acquiring corporation is a component of the taxpayer, and the transaction which constitutes such corporation an acquiring corporation occurs in a taxable year of such corporation which begins after December 31, 1939, for the purpose of determining the daily capital addition or reduction of the taxpayer the above rules shall be applied in a similar manner to determine the daily capital addition or reduction of such acquiring corporation for each day after such transaction.

SEC. 35.743-1 NET CAPITAL CHANGES.—(a) *General.*—If a taxpayer acquires a component corporation in a Supplement A transaction occurring in a taxable year of the taxpayer beginning after December 31, 1939, and if for the particular taxable year the taxpayer computes its average base period net income under section 742 for the purposes of its excess profits credit, the transferred capital addition of the component corporation is added to the taxpayer's daily capital addition for each day after such transaction and the transferred capital reduction of the component corporation is added to the daily capital reduction of the taxpayer for each such day.

The transferred capital addition of such component corporation is the daily capital addition of such component as of the time immediately before the transaction. Such daily capital addition is computed in accordance with the provisions of section 713(g) except that it is not reduced on account of the excluded capital of the component corporation. In determining such daily capital addition of the component corporation, there is disregarded (1) money or property paid in to such component corporation by the taxpayer or any other component corporation of the taxpayer and (2) property consisting of stock in the taxpayer or any other component corporation of the taxpayer paid in by shareholders of the taxpayer or other component corporation.

The transferred capital reduction of such component corporation is the daily capital reduction of such component as of the time immediately before the transaction. Such daily capital reduction is computed in accordance with the provisions of section 713(g). But in determining such daily capital reduction, there is disregarded distributions by such component corporation to the taxpayer or any other component corporation of the taxpayer.

The daily capital addition of the taxpayer to which the transferred capital addition of such component corporation is to be added is its daily capital addition computed in accordance with the provisions of section 713(g), but before reduction on account of excluded capital. The taxpayer's excluded capital after the transaction, which is taken into account in making the reduction required by section 713(g), will embrace the excluded capital of the component corporation which is carried over to the taxpayer in the transaction. In computing the daily capital addition of the taxpayer, there is disregarded (1) money or property paid in to the taxpayer by any of its component corporations and (2) property consisting of stock in any such component corporation paid in by the shareholders of that component corporation.

In computing the daily capital reduction of the taxpayer, there are disregarded distributions by the taxpayer to any of its component corporations not out of earnings and profits.

If an acquiring corporation is a component corporation of a taxpayer and if the transaction constituting such corporation an acquiring corporation occurred in a taxable year of such corporation beginning after December 31, 1939, then, for the purpose of determining the daily capital addition or reduction of the taxpayer, the provisions of this section shall be applied in a similar manner in order to determine the daily capital addition or reduction of such acquiring corporation for each day after such transaction.

This section may be illustrated by the following example:

Example. On March 1, 1942, the X Corporation, in exchange solely for its voting stock, acquires all the assets of the Y Corporation, hav-

ing an adjusted basis for computing loss in the hands of the Y Corporation of \$100,000. Immediately after the exchange, the Y Corporation distributes the stock of the X Corporation in complete liquidation. Both corporations make their income tax returns on a calendar year basis. Among the assets of the Y Corporation transferred in the Supplement A exchange were \$30,000 of State bonds which it had purchased in 1938 for \$32,000. The only money or other property paid into and distributions made by the Y Corporation from January 1, 1940, to March 1, 1942, were as follows:

January 15, 1942, \$5,000 was paid into Y Corporation for stock by persons other than the X Corporation or any component thereof.

March 1, 1942, the day of the Supplement A transaction, but at a time prior to the transaction, the Y Corporation distributed \$10,000 to shareholders (not including the X Corporation or any component thereof), of which only \$7,000 was out of earnings and profits. If, for 1942, the X Corporation computes its average base period net income under Supplement A, it will have for March 2, 1942, and for each day thereafter, \$5,000 of capital addition computed without regard to excluded capital, \$32,000, of excluded capital (assuming the State bonds are retained for the balance of the year), and \$3,000 of capital reduction. Such amounts will be added to the X Corporation's own capital additions, excluded capital, and capital reductions for 1942 in computing its capital additions and reductions under section 713(g) for the purpose of its excess profits credit. No portion of the \$100,000 paid in for stock on March 1, 1942, may be taken into account.

(b) *Limitation under section 742(f)(1).*—Section 742(f)(1) requires the exclusion from transferred capital addition or reduction of any capital addition or reduction (determined as provided in section 743) of a component corporation attributable to stock of such component acquired for assets (other than its own stock) of the acquiring corporation before the Supplement A transaction. Necessarily this rule applies only in case the acquisition of such stock occurred on or after the beginning of the first excess profits tax taxable year of the component corporation, after such capital additions and reductions occurred, and before the Supplement A transaction. Such capital additions and reductions are to be attributed to such stock acquisitions in accordance with the principles of section 35.742-3(b) and the purposes of section 742(f)(1). No adjustment is necessary under section 742(f)(1) with respect to stock which was acquired by the acquiring corporation directly from the corporation whose stock was acquired, unless duplication results and such duplication is not corrected under section 743.

SEC. 744. FOREIGN CORPORATIONS. [ADDED BY SEC. 201, SECOND REV. ACT 1940.]

The term "corporation" as used in this Supplement does not include a foreign corporation.

Supplement B—Highest Bracket Amount and Invested Capital. [Not applicable to taxable years under these regulations (sec. 229, Rev. Act 1942).]

Supplement C—Invested Capital in Connection With Certain Exchanges and Liquidations

SEC. 760. EXCHANGES. [ADDED BY SEC. 230(a), REV. ACT 1942.]

(a) **DEFINITIONS, ETC.**—For the purposes of this section—

(1) **"EXCHANGE", "TRANSFEROR", AND "TRANSFeree".**—The term "exchange" means a transaction by which one corporation (hereinafter called "transferee") receives property of another corporation (hereinafter called "transferor") and the basis of the property received, in the hands of the transferee, for the purposes of section 718(a) is determined by reference to the basis in the hands of the transferor.

(2) **DETERMINATION OF BASIS OF PROPERTY RECEIVED.**—The basis, in the hands of the transferee, of the property of the transferor received by the transferee upon the exchange shall be determined in accordance with section 718(a).

(b) **RULE.**—In the application of section 718(a) to a transferee upon an exchange in determining the amount paid in for stock of the transferee, or as paid in surplus or as a contribution to capital of the transferee, in connection with such exchange, only an amount shall be deemed to have been so paid in equal to the excess of the basis in the hands of the transferee of the property of the transferor received by the transferee upon the exchange over the sum of—

(1) The amount of any liability of the transferor assumed upon the exchange and of any liability subject to which such property was so received, plus

(2) The amount of any liability of the transferee (not arising out of any liability described in paragraph (1)) constituting consideration for the property so received, plus

(3) The aggregate of the amount of any money and the fair market value of any other property (other than such stock and other than property described in paragraphs (1) and (2)) transferred to the transferor.

(c) **REDUCTION IN DAILY INVESTED CAPITAL.**—In the application of section 717 to a transferee upon an exchange, the daily invested capital for any day after such exchange shall be reduced by an amount equal to the amount by which the sum of the amounts specified in paragraphs (1), (2), and (3) of subsection (b) exceeds the basis in the hands of the transferee of the property of the transferor received upon the exchange.

SEC. 35.760-1 DEFINITIONS AND DETERMINATIONS.—For the purposes of section 760 and of sections 35.760-1, 35.760-2, and 35.760-3:

(a) *Exchange, transferee, transferor.*—The term "exchange" means a transaction in which one corporation, called the "transferee," ac-

quires property of another corporation, called the "transferor," and the basis to the transferee of the property acquired, for the purposes of determining the amount of money or property paid in for stock, or as paid-in surplus, or as a contribution to the capital of the transferee pursuant to the provisions of section 718(a) as a result of such exchange, is a substituted basis under section 113(b)(2)(A), i. e., is a basis determined by reference to the basis of such property in the hands of the transferor.

(b) *Applicability of section 760 to various types of exchanges.*—

(1) *In general.*—A substituted basis within the provisions of section 113(b)(2)(A) may result from—

(i) the application of section 113(a)(7) to property acquired in an exchange in a taxable year beginning after December 31, 1917, pursuant to a plan of reorganization under the provisions of section 112(g);

(ii) the application of section 113(a)(8) to property acquired in a taxable year beginning after December 31, 1920, by a corporation by the issuance of its stock or securities, if immediately after such acquisition the transferor is in control of the corporation under the provisions of section 112(b)(5), or by a corporation as paid-in surplus or as a contribution to capital;

(iii) the application of section 113(a)(17) and section 372 in certain instances to property acquired in connection with exchanges and distributions in obedience to certain orders of the Securities and Exchange Commission;

(iv) the application of section 113(a)(20) to property acquired in certain railroad reorganizations;

(v) the application of section 113(a)(21) to property acquired by certain street, suburban, or interurban electric railway corporations; and

(vi) the application of section 23.38(b) of Consolidated Income Tax Return Regulations 104, or section 33.38(b) of Consolidated Excess Profits Tax Return Regulations 110 to property acquired by a member of an affiliated group of corporations from another member of such group during a consolidated return period.

The rules provided with respect to the provisions of the Code and of the consolidated returns regulations mentioned in this section shall also be applicable with respect to corresponding provisions of prior revenue laws and of prior consolidated returns regulations.

Example. In 1939 Corporation X, solely in exchange for 1,000 shares of its common voting stock (representing 5 percent of its total voting stock), acquired in a statutory reorganization under section 112(g)(1)(C) all the assets of Corporation Y. Under section 113(a)(7)(B), the basis of such assets in the hands of Corporation X

would be determined by reference to the basis of such assets in the hands of Corporation Y. The amount to be included in the equity invested capital of Corporation X as the amount paid in for stock of Corporation X as a result of such exchange shall be determined under section 760.

The mere fact that property was acquired in an exchange pursuant to a plan of reorganization in which gain or loss was not recognized does not of itself invoke the provisions of section 760 if the basis of the property is not fixed by reference to the basis in the hands of the transferor. Thus, if the exchange described in the preceding example occurred in 1935, the basis of the assets to Corporation X would be fair market value at the date of the exchange because of failure of Corporation Y to retain the 50 percent control in such assets pursuant to section 113(a)(7)(A), and the provisions of section 760 would be inapplicable in determining the amount includible in the equity invested capital of Corporation X as a result of the exchange.

(2) *Exchanges constituting intercorporate liquidations.*—Since section 760 is applicable only in the determination of the amount paid in for stock, or as paid-in surplus, or as a contribution to capital, of a transferee upon an exchange, such section shall not be applicable in determining the equity invested capital of such transferee in the case of the receipt of property in any of the exchanges described in this section if the receipt of such property is a distribution in an intercorporate liquidation, in whole or in part, of the transferor within the provisions of section 761. In such cases, the exchange shall be considered to be an intercorporate liquidation subject to the provisions of section 761. For rules relating to the adjustment of equity invested capital in the case of intercorporate liquidations, see section 761 and section 35.761-7.

The provisions of this paragraph may be illustrated by the following example:

Example. Prior to 1940, Corporation A owned the entire outstanding capital stock of Corporation B. In 1940, Corporation C acquired all of the assets of Corporation A and Corporation B in a statutory consolidation constituting a reorganization under section 112(g)(1)(A). Although Corporation C might be deemed to have acquired the assets of Corporation B with a basis determined by reference to the basis of such assets in the hands of Corporation B, the provisions of section 760 are not applicable to such exchange since section 761(f) provides that, in such a case, Corporation C shall be considered to have acquired in the statutory consolidation the stock of Corporation B previously owned by Corporation A and to have received the assets of Corporation B in an intercorporate liquidation.

(c) *Determination of basis of property received.*—(1) *General rule.*—In determining the amount paid in for stock, or as paid-in surplus, or as a contribution to capital of the transferee for the purposes of section 718(a) with respect to an exchange, the basis of the property received upon the exchange is to be determined in accordance with the rules provided by section 718(a) (2); namely, the basis (unadjusted) to the transferee for determining loss; adjusted with respect to the period prior to its receipt by the transferee, by an amount equal to the adjustments proper under section 115(1) for determining earnings and profits. For the purposes of determining such basis (unadjusted) to the transferee, the amount of any gain or loss recognized to the transferor upon the exchange shall be limited to the gain or loss taken into account under section 115(1) in computing the earnings and profits of the transferor. If the property was not disposed of prior to the taxable year, such unadjusted basis shall be determined under the law applicable to the taxable year. If the property was acquired in a taxable year beginning after February 28, 1913, and prior to January 1, 1934, and the basis of such property was prescribed by section 113(a) (6), (7), or (9) of the Revenue Act of 1932, or if the property was acquired in a taxable year beginning after February 28, 1913, and prior to January 1, 1936, and the basis of such property was prescribed by section 113(a) (6), (7), or (8) of the Revenue Act of 1934, for the purposes of section 760 the basis of such property shall be the same as the basis prescribed by the Revenue Act of 1932 or the Revenue Act of 1934, respectively. See section 113(a) (12) and (16). If the property was disposed of prior to the taxable year, such unadjusted basis shall be that prescribed by the law applicable to the year of disposition, but without regard to the value of the property as of March 1, 1913.

(2) *Applicability of section 760 in case of statutory change.*—If the transferee received property in any taxable year in a transaction which, under the revenue law applicable to such year, did not constitute an exchange within the provisions of section 760(a), and if—

(i) such property is held in the taxable year, and under the revenue law applicable to such year such transaction qualifies as an exchange under section 760, or

(ii) such property was disposed of in a taxable year subsequent to the year of acquisition and under the revenue law applicable to such subsequent taxable year, the transaction did qualify as an exchange under section 760,

the provisions of section 760 are applicable in determining the amount paid in to the transferee as a result of such transaction. However, if such property was disposed of prior to a year in which the revenue law was changed so as to bring a transaction of such a character within

the provisions of section 760, the provisions of section 760 shall not be applicable in determining the invested capital of the transferee attributable to the property acquired in such transaction.

Thus, if after December 31, 1917, a corporation acquired the entire assets of another corporation in exchange solely for 79 percent of its voting stock, although such transaction would constitute a reorganization and a tax-free exchange under the Revenue Acts of 1924, 1926, and 1928, the basis of the assets to the transferee would not be determined by reference to the basis of such assets in the hands of the transferor since an interest or control of 80 percent in the assets transferred did not remain in the transferor. See sections 203(b) (3) and (4), 203(h) (1) (A), and 204(a) (7) of the Revenue Acts of 1924 and 1926, and sections 112(b) (3) and (4), 112(i) (1) (A), and 113(a) (7) of the Revenue Act of 1928. The percentage of control necessary to establish a substituted basis for such property was reduced to 50 percent by section 113(a) (7) of the Revenue Acts of 1932 and 1934. The Revenue Act of 1936 removed the necessity for any control under section 113(a) (7), but preserved the basis established under the Revenue Act of 1932 or 1934. The Revenue Act of 1938 and the Code provide in section 113(a) (7) (A) that with respect to property acquired by a corporation in connection with a reorganization after December 31, 1917, but in a taxable year beginning prior to January 1, 1936, 50 percent control is necessary for the property transferred to have a basis to the transferee fixed by reference to the basis of the property in the hands of the transferor. In the case of property acquired in connection with a reorganization after December 31, 1935, no such control is necessary.

Example. Assume that in 1926, Corporation C acquired all the property of Corporation D in exchange for 79 percent of its entire capital stock, all of which was voting stock. Although the transaction would have been a reorganization and a tax-free exchange, the basis of the property to Corporation C in any taxable year beginning before January 1, 1932, would not have been fixed by reference to the basis of such property in the hands of Corporation D. Consequently, if Corporation C had disposed of the property prior to January 1, 1932, the amount paid in to Corporation C as a result of the 1926 exchange would not be determined under section 760. If Corporation C had disposed of the property in a taxable year beginning subsequent to December 31, 1931, the basis of such property to Corporation C would be the basis to Corporation D, and the amount paid in to Corporation C as a result of the 1926 exchange would be computed under section 760.

(3) *Inconsistent position.*—As to the effect of an inconsistent position in the determination of invested capital under section 760, or

without regard to its provisions, see section 734 and the regulations thereunder.

SEC. 35.760-2 DETERMINATION OF AMOUNT PAID IN FOR STOCK, OR AS PAID-IN SURPLUS, OR AS A CONTRIBUTION TO CAPITAL.—For the purposes of section 718(a), the amount of money or property determined to have been paid in for stock of the transferee, or as paid-in surplus or as a contribution to capital of the transferee in connection with an exchange defined in section 35.760-1(a) shall be the excess of the basis (determined under section 35.760-1(b)) in the hands of the transferee of the property of the transferor received by the transferee upon the exchange over the sum of—

(a) the amount of any liability of the transferor assumed upon the exchange and of any liability subject to which such property was so received, plus

(b) the amount of any liability of the transferee (not arising out of any liability described in (a) of this section) constituting consideration for the property so received, plus

(c) the aggregate of the amount of any money and the fair market value of any other property (other than such stock and other than property described in (a) and (b) of this section) transferred to the transferor, whether or not such money or property was permitted to be received by the transferor without the recognition of gain.

If the sum of the amounts specified in (a), (b), and (c) of this section exceeds the basis in the hands of the transferee of the property received from the transferor, such excess shall not be taken into account in computing the equity invested capital of the transferee but shall be used to reduce the daily invested capital of the transferee for each day after the exchange. As to the computation to be made in case of such excess, see section 35.760-3.

The application of the provisions of this section may be illustrated by the following examples:

Example (1). In 1942 Corporation X transferred property which had an adjusted basis for determining gain or loss of \$600,000 to Corporation Y in consideration (1) of 80 percent of the capital stock of Corporation Y which had a fair market value of \$400,000; (2) of the assumption by Corporation Y of open account indebtedness of Corporation X amounting to \$20,000; (3) of the payment by Corporation Y of money and other property amounting to \$120,000; and (4) of the issuance by Corporation Y to Corporation X of a bond in the amount of \$110,000 secured by a lien upon the property acquired. Included in the property acquired by Corporation Y in connection with the foregoing exchange was a building which was subject to a mortgage liability of \$100,000 which was not assumed by Corporation X and which was not assumed by Corporation Y. The money and other

property received by Corporation X was not distributed in pursuance of the plan of reorganization and therefore the gain resulting from the exchange was recognized by such corporation in accordance with section 112(d)(2). The amount includible in the equity invested capital of Corporation Y determined under the provisions of section 760(b) with respect to the exchange is \$370,000, computed as follows:

Gain to Corporation X recognized upon exchange

Fair market value of capital stock of Corporation Y.....	\$400,000
Amount of liabilities of Corporation X assumed.....	20,000
Bond secured by lien upon property.....	110,000
Money and other property.....	120,000
Mortgage liability subject to which building was transferred.....	100,000
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Total consideration.....	750,000
Less: Adjusted basis of property transferred.....	600,000
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Gain.....	150,000

The gain recognized to Corporation X, however, is limited to \$120,000, representing the sum of the money and fair market value of other property received by Corporation X which, pursuant to the plan of reorganization, was not distributed (see sections 112(d)(2) and 112(k)).

Amount deemed to be paid in for stock of Corporation Y under section 718(a) and section 760

Adjusted basis of property to Corporation X.....	\$600,000
Add: Gain to Corporation X recognized upon exchange.....	120,000
<hr/>	
Unadjusted basis for determining loss to Corporation Y.....	720,000
Deduct: Amount of liabilities of Corporation X assumed.....	\$20,000
Bonds issued by Corporation Y secured by lien upon property received.....	110,000
Money and other property paid.....	120,000
Mortgage liability subject to which building was acquired by Corporation Y.....	100,000
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	350,000
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Amount deemed to have been paid in for stock of Corporation Y upon the exchange.....	370,000

Daily invested capital of Corporation Y resulting from the exchange

Amount deemed to have been paid in to Corporation Y upon the exchange.....	\$370,000
Borrowed invested capital:	
Mortgage liability on building not assumed.....	\$100,000
Bond issued secured by lien upon property.....	110,000
<hr/>	
Total borrowed capital.....	210,000
Borrowed invested capital (50 percent of \$210,000).....	105,000
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Daily invested capital.....	475,000

Assume that in 1943, Corporation Y sold the properties acquired from Corporation X for \$750,000, the purchaser paying cash in the amount of \$650,000 and taking the building subject to the mortgage liability of \$100,000. The gain recognized to Corporation Y, and included in its earnings and profits, is \$30,000 (\$750,000 minus \$720,000). There were no other accumulated earnings and profits. Immediately thereafter Corporation Y redeemed and canceled the bond and mortgage it had issued to Corporation X at the time of the exchange. That portion of the daily invested capital of Corporation Y for the excess profits tax taxable year following the year of the sale and attributable to the acquisition and sale of the properties received from Corporation X would be \$400,000, computed as follows:

Equity invested capital resulting from the exchange.....	\$370, 000
Earnings and profits from sale of properties.....	30, 000
	400, 000
Daily invested capital.....	400, 000

Example (2). Assume that in the preceding example, the money and other property received by Corporation X upon the exchange were distributed pursuant to the plan of reorganization so that no gain was recognized to Corporation X as a result of the exchange (see sections 112(d) (1) and 112(k)). Consequently, the basis of the property received by Corporation Y would not be increased by any gain recognized to Corporation X pursuant to section 113(a) (7), and would be \$600,000, rather than \$720,000. The amount deemed to have been paid in for stock of Corporation Y upon the exchange would be \$250,000 instead of \$370,000, and the daily invested capital of Corporation Y resulting from the exchange would be \$355,000 instead of \$475,000. Upon the sale of the property, however, a gain of \$150,000, rather than \$30,000, would be realized, and the accumulated earnings and profits of Corporation Y would be increased accordingly by \$150,000 instead of \$30,000. That portion of the daily invested capital of Corporation Y for the excess profits tax taxable year following the year of the sale and attributable to the acquisition and sale of the properties received from Corporation X would be \$400,000 (\$250,000 plus \$150,000).

SEC. 35.760-3 REDUCTION IN DAILY INVESTED CAPITAL.—For the purposes of determining the daily invested capital of the transferee upon an exchange pursuant to the provisions of section 717 for any day after such exchange, the daily invested capital for each such day shall be reduced by an amount equal to the excess of the sum of the amounts specified in section 760(b) (1), (2), and (3) over the basis (determined in accordance with section 35.760-1(b)) to the transferee of the property of the transferor received upon the exchange.

In any case in which the excess of the sum of the amounts specified in section 760(b) (1), (2), and (3) over the basis of the transferee of the property received upon the exchange is greater than the amount

of the daily invested capital for any day after such exchange, the daily invested capital for such day shall be a minus quantity. In such case the average invested capital of the taxpayer computed under section 716 shall be the aggregate of the daily invested capital for each day of the taxable year computed by taking into account any plus amounts in daily invested capital and any negative amounts in daily invested capital after the exchange resulting from the application of section 760(c), divided by the number of days in such taxable year. In no case, however, shall such average invested capital be an amount which is less than zero.

The provisions of this section may be illustrated by the following examples:

Example (1). In 1942 Corporation O owned property with an adjusted basis for determining gain or loss of \$400,000 but with a fair market value of \$1,000,000. Corporation O had no accumulated earnings and profits or deficit in earnings and profits. On June 30, 1942, pursuant to a plan of reorganization, Corporation P acquired such property from Corporation O in exchange for 80 percent of its outstanding stock which had a fair market value of \$400,000, \$125,000 in cash, and \$475,000 of its short term notes. Immediately prior to the exchange Corporation P had an equity invested capital of \$100,000, consisting of money and property paid in and of accumulated earnings and profits. Under section 112(d) (1) no gain was recognized to Corporation O upon the exchange since immediately after the exchange and in pursuance of the plan of reorganization it distributed the cash and stock and notes of Corporation P to its shareholders. The daily invested capital of Corporation P for each day after the exchange was \$137,500 and the average invested capital for the taxable year 1942 was \$118,904.11, computed as follows:

Daily invested capital of Corporation P immediately after exchange

Equity invested capital immediately prior to exchange-----	\$100,000.00
Amount deemed to have been paid in under sections 718(a) and 760 upon the exchange-----	0
Borrowed invested capital of Corporation P (50 percent of \$475,000)-----	237,500.00
Total daily invested capital prior to application of section 760(c)-----	337,500.00
Less: Amount provided by section 760(c) as reduction in daily invested capital: *	
Cash paid upon the exchange-----	\$125,000.00
Notes issued by Corporation P-----	475,000.00
Total-----	600,000.00
Less: Basis of property received upon exchange---	400,000.00
Reduction under section 760(c)-----	200,000.00
Daily invested capital for each day after exchange-----	137,500.00

Average invested capital of Corporation P for 1942

Aggregate of daily invested capital for each day prior to and including the days of the exchange (\$100,000×181 days)-----	\$18, 100, 000. 00
Aggregate of daily invested capital for each day after the exchange (\$137,500×184 days)-----	25, 300, 000. 00

Total aggregate daily invested capital for each day of the taxable year-----	43, 400, 000. 00
Average invested capital (\$43,400,000 divided by 365 days)-----	118, 904. 11

Example (2). In 1942 Corporation A owned property with an adjusted basis for determining gain or loss of \$1,300,000 but with a fair market value of \$4,500,000. Corporation A had no accumulated earnings and profits or deficit in earnings and profits. On June 30, 1942, pursuant to a plan of reorganization Corporation B acquired such property from Corporation A in exchange for 80 percent of its outstanding stock which had a fair market value of \$1,500,000, cash of \$500,000, and bonds of \$2,500,000. Immediately prior to the exchange Corporation B had an equity invested capital of \$375,000 consisting of money paid in and of accumulated earnings and profits. Under section 112(d)(1) no gain was recognized to Corporation A upon the exchange since immediately after the exchange and pursuant to the plan of reorganization it distributed the cash and bonds of Corporation B to its shareholders. The daily invested capital of Corporation B for each day after the exchange is minus \$75,000 and the average invested capital for the taxable year 1942 is \$148,150 68, computed as follows:

Daily invested capital immediately after the exchange

Equity invested capital of Corporation B immediately prior to the exchange-----	\$375, 000. 00
Amount deemed to have been paid in upon the exchange-----	0
Borrowed invested capital (50 percent of \$2,500,000)-----	1, 250, 000. 00

Total daily invested capital prior to application of section 760(c)-----	1, 625, 000. 00
Less: Amount provided by section 760(c) as reduction in daily invested capital:	
Cash paid upon the exchange-----	\$500, 000. 00
Bonds issued upon the exchange-----	2, 500, 000. 00
Total-----	3, 000, 000. 00
Less basis of property received upon exchange-----	1, 300, 000. 00
Reduction under section 760(c)-----	1, 700, 000. 00
Daily invested capital for each day immediately after exchange (a minus quantity)-----	(75, 000. 00)

Average invested capital of Corporation B for 1942

Aggregate of daily invested capital for each day prior to and including the day of the exchange ($\$375,000 \times 181$ days) -----	\$67, 875, 000. 00
Aggregate of daily invested capital for each day after the exchange ($(\$75,000) \times 184$ days) (a minus quantity) -----	(13, 800, 000. 00)
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Total aggregate daily invested capital for each day of the taxable year -----	54, 075, 000. 00
Average invested capital ($\$54,075, 000$ divided by 365 days) ----	148, 150. 68

SEC. 761. INVESTED CAPITAL ADJUSTMENT AT THE TIME OF TAX-FREE INTERCORPORATE LIQUIDATIONS. [ADDED BY SEC. 230(a), REV. ACT 1942.]

(a) **DEFINITION OF INTERCORPORATE LIQUIDATION.**—As used in this section, the term “intercorporate liquidation” means the receipt (whether or not after December 31, 1941) by a corporation (hereinafter called the “transferee”) of property in complete liquidation of another corporation (hereinafter called the “transferor”) to which

(1) the provisions of section 112(b) (6), or the corresponding provision of a prior revenue law, is applicable or

(2) a provision of law is applicable prescribing the nonrecognition of gain or loss in whole or in part upon such receipt (including a provision of the regulations applicable to a consolidated income or excess profits tax return but not including section 112(b) (7), (9), or (10) or a corresponding provision of a prior revenue law), but only if none of such property so received is a stock or a security in a corporation the stock or securities of which are specified in the law applicable to the receipt of such property as stock or securities permitted to be received (or which would be permitted to be received if they were the sole consideration) without the recognition of gain.

(b) **DEFINITION OF PLUS ADJUSTMENT AND MINUS ADJUSTMENT.**—For the purposes of this section—

(1) **PLUS ADJUSTMENT.**—The term “plus adjustment” means the amount, with respect to an intercorporate liquidation, determined to be equal to the amount by which the aggregate of the amount of money received by the transferee in such intercorporate liquidation, and of the adjusted basis at the time of such receipt of all property (other than money) so received, exceeds the sum of—

(A) the aggregate of the adjusted basis of each share of stock with respect to which such property was received; such adjusted basis of each share to be determined immediately prior to the receipt of any property in such liquidation with respect to such share, and

(B) the aggregate of the liabilities of the transferor assumed by the transferee in connection with the receipt of such property, of the liabilities (not assumed by the transferee) to which such property so received was subject, and of any other consideration (other than the stock with respect to which such property was received) given by the transferee for such property so received.

(2) **MINUS ADJUSTMENT.**—The term “minus adjustment” means the amount, with respect to an intercorporate liquidation, determined to be equal to the amount by which the sum of—

(A) the aggregate of the adjusted basis of each share of stock with respect to which such property was received; such adjusted basis of each share to be determined immediately prior to the receipt of any property in such liquidation with respect to such share, and

(B) the aggregate of the liabilities of the transferor assumed by the transferee in connection with the receipt of such property, of the liabilities (not assumed by the transferee) to which such property so received was subject, and of any other consideration (other than the stock with respect to which such property was received) given by the transferee for such property so received

exceeds the aggregate of the amount of the money so received and of the adjusted basis, at the time of receipt, of all property (other than money) so received.

(3) **RULES FOR APPLICATION OF PARAGRAPHS (1) AND (2).**—In determining the plus adjustment or minus adjustment with respect to any share, the computation shall be made in the same manner as is prescribed in paragraphs (1) and (2) of this subsection, except that there shall be brought into account only that part of each item which is determined to be attributable to such share.

(c) **RULES FOR THE APPLICATION OF THIS SECTION.**—

(1) **STOCK HAVING COST BASIS.**—The property received by a transferee in an intercorporate liquidation attributable to a share of stock having in the hands of the transferee a basis determined to be a cost basis, shall be considered to have, for the purposes of subsection (b), an adjusted basis at the time so received determined as follows:

(A) The aggregate of the property (other than money) held by the transferor at the time of the acquisition by the transferee of control of the transferor (or, if such share was acquired after the acquisition of such control, at the time of the acquisition of such share, or, if such control was not acquired, at the time immediately prior to the receipt of any property in the intercorporate liquidation in respect of such share) shall be deemed to have an aggregate basis equal to the amount obtained by (i) multiplying the amount of the adjusted basis at such time of such share in the hands of the transferee by the aggregate number of share units in the transferor at such time (the interest represented by such share being taken as the share unit), and (ii) adjusting for the amount of money on hand and the liabilities of the transferor at such time.

(B) The basis which property of the transferor is deemed to have under subparagraph (A) at the time therein specified shall be used in determining the basis of property subsequently acquired by the transferor the basis of which is determined with reference to the basis of property specified in subparagraph (A).

(C) The basis which property of the transferor is deemed to have under subparagraphs (A) and (B) at the time therein specified shall be used in determining all subsequent adjustments to the basis of such property.

(D) The property so received by the transferee shall be deemed to have, at the time of its receipt, the same basis it is deemed to have under the foregoing provisions of this paragraph in the hands of the transferor, or in the case of property not specified in subparagraph (A) or (B), the same basis it would have had in the hands of the transferor.

(E) Only such part of the aggregate property received by the transferee in the intercorporate liquidation as is attributable to such share shall be considered as having the adjusted basis which property is deemed to have under subparagraphs (A), (B), (C), and (D) of this paragraph.

(2) BASIS OF STOCK NOT A COST BASIS.—The property received by a transferee in an intercorporate liquidation attributable to a share of stock having in the hands of the transferee a basis determined to be a basis other than a cost basis shall, for the purposes of subsection (b), be considered to have, at the time of its receipt, the basis it would have had had the first sentence of section 113(a) (15) been applicable.

(3) DEFINITION OF CONTROL.—As used in this subsection, the term "control" means the ownership of stock possessing at least 80 per centum of the total combined voting power of all classes of stock entitled to vote and the ownership of at least 80 per centum of the total number of shares of all other classes of stock (except non-voting stock which is limited and preferred as to dividends), but only if in both cases such ownership continues until the completion of the intercorporate liquidation.

(d) ADJUSTMENT OF EQUITY INVESTED CAPITAL.—If property is received by the transferee in an intercorporate liquidation, in computing the equity invested capital of the transferee for any day following the completion of such intercorporate liquidation—

(1) with respect to any share of stock in the transferor having in the hands of the transferee, immediately prior to the receipt of any property in such intercorporate liquidation, a basis determined to be a cost basis, the earnings and profits or deficit in earnings and profits of the transferee shall be computed as if on the day following the completion of such intercorporate liquidation the transferee had realized a recognized gain equal to the amount of the plus adjustment in respect of such share, or had sustained a recognized loss equal to the amount of the minus adjustment in respect of such share;

(2) with respect to any share of stock in the transferor having in the hands of the transferee, immediately prior to the receipt of any property in such intercorporate liquidation, a basis determined to be a basis other than a cost basis, there shall be treated as an amount includible in the sum specified in section 718(a) the amount of the plus adjustment with respect to such share, or as an amount includible in the sum specified in section 718(b) the amount of the minus adjustment with respect to such share.

(e) INVESTED CAPITAL BASIS.—The adjusted basis which property received by the transferee in an intercorporate liquidation is considered to have under the provisions of subsection (c) at the time of its receipt shall be thereafter treated as the adjusted basis, in lieu of the adjusted basis otherwise prescribed, in computing any amount, determined by reference to the basis of such property in the hands of

the transferee, entering into the computation of the invested capital of the transferee, or of any other corporation the computation of the invested capital of which is determined by reference to the basis of such property in the hands of the transferee.

(f) **STATUTORY MERGERS AND CONSOLIDATIONS.**—If a corporation owns stock in another corporation and such corporations are merged or consolidated in a statutory merger or consolidation, then for the purposes of this section and section 718 such stock shall be considered to have been acquired (in such statutory merger or consolidation) by the corporation resulting from the statutory merger or consolidation, and the properties of such other corporation attributable to such stock to have been received by such resulting corporation as a transferee from such other corporation as a transferor in an intercorporate liquidation.

(g) **DETERMINATIONS.**—

(1) **REGULATIONS.**—Any determination which is required to be made under this section (including determinations in applying this section in cases where there is a series of transferees of the property and cases where the stock of the transferor is acquired by the transferee from another corporation, and the determinations of the basis and adjusted basis which property or items thereof have or are considered to have) shall be made in accordance with regulations which shall be prescribed by the Commissioner with the approval of the Secretary. If the transferor or the transferee is a foreign corporation, the provisions of this section shall apply to such extent and under such conditions and limitations as may be provided in such regulations.

(2) **APPLICATION TO LIQUIDATION EXTENDING OVER LONG PERIOD.**—The Commissioner is authorized to prescribe rules similar to those provided in this section with respect to the days within the period beginning with the date on which the first property is received in the intercorporate liquidation and ending with the day of its completion; and the extent to which, and the conditions and limitations under which, such rules are to be applicable.

SEC. 35.761-1 INTERCORPORATE LIQUIDATION.—(a) *General rule.*—For the purposes of section 761, the term “intercorporate liquidation” means the receipt (whether or not after December 31, 1941) by a corporation (hereinafter called the “transferee”) of property in complete liquidation of another corporation (hereinafter called the “transferor”) to which—

(1) the provisions of section 112(b)(6), or the corresponding provisions of a prior revenue law, are applicable, including the case in which an election has been made pursuant to the last sentence of section 113(a)(15) of the Revenue Act of 1936, as amended by section 808 of the Revenue Act of 1938, or

(2) a provision of law is applicable prescribing the nonrecognition of gain or loss in whole or in part upon such receipt, including a provision of the regulations applicable to a consolidated income tax return or a consolidated excess profits tax return, but not including the provisions of section 112(b)(7) of the Revenue Act of 1938 relating to certain complete liquidations occurring

during December 1938, or the provisions of section 112(b)(9) relating to certain complete liquidations of railroad corporations. The provisions of regulations applicable to consolidated income or excess profits tax returns which provide for the nonrecognition, in whole or in part, of gain or loss upon a liquidation of a member of an affiliated group during a consolidated return period are article 37 of Regulations 75, 78, 89, 97, 102, section 23.37 of Regulations 104, and section 33.37 of Regulations 110. A liquidation of a member of an affiliated group during a taxable year, which is a consolidated return period, beginning prior to January 1, 1929, is not an intercorporate liquidation for the purposes of section 761, unless some provision of law other than regulations relating to consolidated returns is applicable prescribing the nonrecognition of gain or loss, in whole or in part, upon the liquidation. A liquidation of a member of an affiliated group during a taxable year, which is a consolidated return period, beginning after December 31, 1933, is not an intercorporate liquidation if it comes within the exceptions provided in articles 37(a) and 38(c)(3) of Regulations 89, article 37(a)(1) and (2) of Regulations 97 and 102, section 23.37(a)(1) and (2) of Regulations 104, and section 33.37(a)(1) and (2) of Regulations 110.

The rules provided with respect to the sections of the Code mentioned in this section shall also be applicable with respect to corresponding sections of prior revenue laws.

(b) *Exception.*—A transaction is an intercorporate liquidation within the meaning of the foregoing provisions only if none of the property received by the transferee is a stock or a security in a corporation, the stock or securities of which are specified in the law applicable to the receipt of such property as stock or securities permitted to be received (or which would be permitted to be received if they were the sole consideration) without the recognition of gain.

Thus, assume that Corporation P owned all the outstanding stock of Corporation S. Pursuant to a plan of reorganization, Corporation S transferred all its assets to Corporation S(1) in exchange for all the capital stock of Corporation S(1), and distributed such stock to Corporation P in liquidation. The entire property received by Corporation P upon the liquidation of Corporation S was stock in a corporation which pursuant to section 112(b)(3) Corporation P was permitted to receive without the recognition of gain. Consequently, the transaction in which Corporation P acquired the stock of Corporation S(1) in complete liquidation of Corporation S is not an intercorporate liquidation within the provisions of section 761. If the reorganization had occurred in a taxable year beginning prior to January 1, 1934, and the stock of Corporation S(1) had been acquired pursuant to a plan

of reorganization by Corporation P without the surrender of the stock of Corporation S, such acquisition by Corporation P of all the assets of Corporation S would not constitute an intercorporate liquidation within the meaning of section 761, since the stock of Corporation S(1) is a stock specified in section 112(g) of the Revenue Act of 1932 and corresponding provisions of prior revenue laws as stock in a corporation permitted to be received without the recognition of gain. If the stock of Corporation S(1) was acquired by Corporation P in a taxable year beginning subsequent to December 31, 1933, without the surrender or cancellation or retirement of the stock of Corporation S, since the transaction would not be one in which gain or loss is not recognized to Corporation P, the transaction would not be an intercorporate liquidation under section 761. (See section 19.112(g)-5 of Regulations 103 and section 29.112(g)-5 of Regulations 111.)

Assume that Corporation P owned the entire outstanding capital stock of Corporation S and that Corporation S owned the entire outstanding capital stock of Corporation S(1). If Corporation P acquired the stock of Corporation S(1) in a complete liquidation of Corporation S pursuant to the provisions of section 112(b) (6), such liquidation would be an intercorporate liquidation within the provisions of section 761 since section 112(b) (6) does not specify stock in any corporation as stock permitted to be received without the recognition of gain.

If, in connection with an intercorporate liquidation described in this section, there is also involved (1) the transfer by the transferor to the transferee of property not attributable to the shares of the transferor owned by the transferee in consideration of stock issued by the transferee in an exchange described in section 112(b) (4) or in an exchange not within the provisions of section 112(b) ; or (2) the transfer to the transferee by minority shareholders of the transferor of stock of the transferor in consideration of the issuance by the transferee of stock in an exchange described in section 112(b) (3) or in an exchange not within the provisions of section 112(b), the amount includible in the equity invested capital as a result of the receipt of such property or such stock in the exchanges described in (1) or (2) of this sentence shall be determined pursuant to the provisions of section 760 or of section 718(a) (1) or (2), as the case may be. (See section 35.760-2 and section 35.718-1.)

(c) *Statutory merger or consolidation.*—In any case in which one corporation owns stock in another corporation (hereinafter called the “transferring corporation”), whether or not such stock ownership amounts to control, and such corporations are merged or consolidated in a statutory merger or consolidation, for the purposes of section 761

and of section 718, the corporation resulting from the statutory merger or consolidation (hereinafter called the "resulting corporation") shall be considered first to have acquired the stock of such transferring corporation in the statutory merger or consolidation and then to have acquired the properties of such transferring corporation which are attributable to the stock considered to have been acquired by the resulting corporation in the statutory merger or consolidation as a transferee from the transferring corporation as a transferor in an intercorporate liquidation. The foregoing rule is equally applicable to all cases of statutory merger and consolidation, whether the resulting corporation operates under the charter of the parent, the subsidiary, or under a new charter.

(d) *Intercorporate liquidation involving foreign corporation.*—An exchange which would otherwise be an intercorporate liquidation subject to the provisions of section 761, but which involves a foreign corporation as the transferor or transferee, shall not constitute an intercorporate liquidation for the purposes of section 761 if such exchange was consummated after June 6, 1932, and involved gain unless, prior to such exchange, it was established to the satisfaction of the Commissioner pursuant to the provisions of section 112(i) and section 19.112(i)-1 of Regulations 103, section 29.112(i)-1 of Regulations 111, or the corresponding provisions of prior revenue laws and regulations, that such exchange was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes.

Sec. 35.761-2 DEFINITION OF PLUS ADJUSTMENT AND MINUS ADJUSTMENT.—For the purposes of determining the adjustment of equity invested capital under section 761(d) and section 35.761-7:

(a) *Plus adjustment.*—The term "plus adjustment" means the amount computed with respect to an intercorporate liquidation and determined to be equal to the amount by which the aggregate of the amount of money received by the transferee in the intercorporate liquidation and of the adjusted basis at the time of receipt of all property, other than money, so received exceeds the sum of—

(1) the aggregate of the adjusted basis of each share of stock with respect to which the property was received in the intercorporate liquidation, and

(2) the aggregate of the liabilities of the transferor assumed by the transferee in connection with the receipt of the property in the intercorporate liquidation, of the liabilities (not assumed by the transferee) to which the property so received was subject, and of any other consideration other than the stock with respect to which such property was so received given by the transferee for such property so received.

(b) *Minus adjustment*.—The term “minus adjustment” means the amount computed with respect to an intercorporate liquidation and determined to be equal to the amount by which the sum of—

(1) the aggregate of the adjusted basis of each share of stock with respect to which the property was received in the intercorporate liquidation, and

(2) the aggregate of the liabilities of the transferor assumed by the transferee in connection with the receipt of the property in the intercorporate liquidation, of the liabilities (not assumed by the transferee) to which the property so received was subject, and of any other consideration other than the stock with respect to which such property was so received given by the transferee for such property so received,

exceeds the aggregate of the amount of money received by the transferee in the intercorporate liquidation and of the adjusted basis at the time of receipt of all property other than money so received.

(c) *Rules applicable in determining plus adjustment and minus adjustment*.—For the purpose of determining the plus adjustment and the minus adjustment provided by section 761(b):

(1) The adjusted basis of each share of stock with respect to which property is received upon the intercorporate liquidation shall be determined immediately prior to the receipt in the intercorporate liquidation of the property with respect to such share. As to the computation of the adjusted basis of such share, see section 35.761-4.

(2) The adjusted basis of property other than money at the time of receipt of such property shall be determined in accordance with the provisions of section 761(c) and section 35.761-5 or 35.761-6. This adjusted basis may be different from the adjusted basis otherwise determined under the provisions of section 113.

(3) A share of stock with respect to which property is received upon an intercorporate liquidation means outstanding stock of the transferor owned by the transferee at the time of such liquidation. Outstanding stock of the transferor shall not include shares of the transferor held by it in its treasury as treasury stock. In the case of a complete liquidation of a transferor under the provisions of section 112(b) (6), such stock refers only to stock of the transferor owned by the transferee at the time of the receipt of the property.

(4) The plus adjustment or the minus adjustment with respect to each share of stock shall be computed in the manner prescribed in section 761(b) (1) and (2), except that there shall be brought into account only that part of each item specified in such section

which is determined to be attributable to such share. The amount of any consideration (other than the stock of the transferor with respect to which property was received upon the intercorporate liquidation) given by the transferee for the property received upon the intercorporate liquidation shall be prorated with respect to each share of stock (other than stock which is limited and preferred as to assets upon liquidation) upon the basis of the percentage which one share of stock is of the total shares of stock of the transferor owned by the transferee at the time of liquidation (not including stock which is limited and preferred as to assets upon liquidation).

(5) In no event shall there be taken into account any plus adjustment with respect to a share of stock which is limited and preferred as to assets upon liquidation of the transferor in excess of the sum of—

(i) the excess of that portion of the net assets to which such share is entitled upon liquidation of the transferor over the adjusted basis to the transferee of such share at the time of liquidation, and

(ii) the amount of any cumulative dividends in arrears upon such share.

(6) Property received by a transferee in an intercorporate liquidation in exchange for stock of the transferee issued by the transferee to the transferor or to minority shareholders of the transferor, whether or not in an exchange within the provisions of section 112(b) (4) of the applicable revenue law, is not property received upon an intercorporate liquidation, but is property received upon an exchange under section 760 or property paid in under section 718(a) (1) or (2). Consequently, other consideration given by the transferee for property received upon the intercorporate liquidation within the provisions of section 761(b) (1) (B) or section 761(b) (2) (B) does not include stock of the transferee issued in consideration for property which is received at the time of the intercorporate liquidation but which is received in an exchange under section 760 or which is paid in under section 718(a) (1) or (2).

(d) *Rules applicable in case intercorporate liquidation extends over period of time.*—If any distribution in an intercorporate liquidation occurs in an excess profits tax taxable year beginning after December 31, 1939, to which the provisions of section 761 are applicable, and if the liquidation is consummated by a series of distributions covering a period of more than one taxable year, the application of the principles of section 761 in the computation of the equity invested capital of

the taxpayer shall, in addition to the requirements set forth in section 761, be subject to the following requirements:

(1) The taxpayer shall file with its excess profits tax return for the first excess profits tax taxable year to which the provisions of section 761 are applicable with respect to the intercorporate liquidation a statement describing the plan pursuant to which the distributions in liquidation have been or will be made and setting forth the period within which the transfer of the property of the transferor to the taxpayer has been or is to be completed.

(2) If the intercorporate liquidation involves a distribution in liquidation pursuant to the provisions of section 112(b)(6), the taxpayer shall comply with the requirements prescribed by section 19.112(b)(6)-3 of Regulations 103 or section 29.112(b)(6)-3 of Regulations 111. As used in such section, the term "profits taxes" includes the excess profits tax imposed by Subchapter E of Chapter 2. The bond required by such section shall also contain provisions unequivocally assuring prompt payment of the excess of income and excess profits taxes (plus penalty, if any, and interest) as computed by the Commissioner without regard to the provisions of section 761 over such taxes computed with regard to such section, regardless of whether such excess may or may not be made the subject of a notice of deficiency under section 272 and regardless of whether it may or may not be assessed.

(3) If the intercorporate liquidation involves a distribution in liquidation other than one pursuant to section 112(b)(6), in addition to the statement required by paragraph (1) for each of the taxable years which falls wholly or partly within the period of liquidation, the taxpayer shall, at the time of filing its excess profits tax return, file with the collector for transmittal to the Commissioner a waiver of the statute of limitations on assessment and collection. The waiver shall be executed on such form as may be prescribed by the Commissioner and shall extend the period for assessment of all income and excess profits taxes for such year to a date not earlier than one year after the last date of the period for assessment of such taxes for the last taxable year in which the transfer of the property of the transferor to the transferee may be completed pursuant to the plan filed by the taxpayer. Such waiver shall also contain such other terms with respect to assessment as may be considered by the Commissioner to be necessary to insure the assessment and collection of the correct tax liability for each year within the period of liquidation. For each of the taxable years which falls wholly or partly within the period of liquidation, the recipient corporation shall file a bond, the amount of which shall be fixed by the Commissioner. The bond shall con-

tain all terms specified by the Commissioner, including provisions unequivocally assuring prompt payment of the excess of the income and excess profits taxes (plus penalty, if any, and interest) as computed by the Commissioner without regard to the provisions of section 761 over such taxes computed with regard to such provisions, regardless of whether such excess may or may not be made the subject of a notice of deficiency under section 272 and regardless of whether it may or may not be assessed. Any bond required under this paragraph shall have such surety or sureties as the Commissioner may require. However, see section 1126 of the Revenue Act of 1926, as amended, providing that where a bond is required by law or regulations, in lieu of surety or sureties there may be deposited bonds or notes of the United States. Only surety companies holding certificates of authority from the Secretary as acceptable sureties on Federal bonds will be approved as sureties. The bonds shall be executed in triplicate so that the Commissioner, the taxpayer, and the surety or the depository may each have a copy.

(4) Pending the completion of the liquidation, if there is a compliance with this section and section 35.761-1 with respect to intercorporate liquidations, the equity invested capital of the taxpayer for each day following a distribution in liquidation of the transferor shall be determined under section 761, and the plus adjustment or minus adjustment for each such day shall be computed under section 761(b) subject to the following rules:

(i) If a distribution in liquidation is in complete cancellation and retirement of any specific share or shares of stock of the transferor, a plus adjustment or a minus adjustment with respect to such share or shares shall be computed at the time such distribution occurred pursuant to the provisions of section 35.761-2(c), and the money and property received upon the distribution, the liabilities of the transferor assumed at the time of the distribution, the liabilities to which the property received in the distribution was subject, and any other consideration (other than the stock of the transferor with respect to which the distribution was received) shall be taken into account in computing the plus adjustment or minus adjustment with respect to such distribution and shall not be allocated to any prior or subsequent distribution.

(ii) If the distribution in liquidation is not in complete cancellation and retirement of any specific share or shares, but extends ratably over all the outstanding shares of the transferor or over all the outstanding shares of a particular class of stock of the transferor, a plus adjustment or a minus adjust-

ment shall be computed at the time of each distribution in accordance with the provisions of section 35.761-2(c), and—

(A) The distribution shall be considered a distribution with respect to each share (or each share of a particular class) held by the transferee;

(B) The adjusted basis of each share for the purposes of computing the plus adjustment or the minus adjustment at the time of any distribution shall bear that ratio to the total adjusted basis of such share computed under section 35.761-4 as the excess of the aggregate of the money and adjusted basis (computed under section 35.761-5) of all property other than money received from the transferor as a distribution over the aggregate of the liabilities of the transferor assumed by the transferee or to which property received from the transferor was subject, bears to the excess of the aggregate of the money and adjusted basis of all property other than money (computed under section 35.761-5) held by the transferor at the time of the first distribution in liquidation over the aggregate of the liabilities of the transferor and liabilities to which the property held by the transferor was subject, at the time of the first distribution in liquidation. In no event, however, shall the portion of the total adjusted basis of a share of stock used in computing the plus adjustment or the minus adjustment under this paragraph exceed an amount which, when added to portions of such basis previously used in computing the plus adjustment or minus adjustment in connection with such intercorporate liquidation, equals the total adjusted basis of such share computed under section 35.761-4;

(C) The amount of any consideration (other than the stock of the transferor with respect to which the distribution was received) given by the transferee at the time of the distribution and the amount of any liability of the transferor assumed at the time of the distribution or any liability to which the property received in the distribution was subject shall be taken into account in computing the plus adjustment or the minus adjustment with respect to such distribution, and shall not be allocated to any other prior or subsequent distribution.

(iii) In no event shall the aggregate of the plus adjustments and minus adjustments computed with respect to an intercorporate liquidation extending over a period of time be dif-

ferent for each day after the last day of the last distribution in liquidation than the plus adjustment or minus adjustment which would have resulted had the intercorporate liquidation been commenced and completed entirely during such last day.

SEC. 35.761-3 DETERMINATION OF BASIS OF STOCK—COST BASIS OR BASIS OTHER THAN COST.—(a) *Cost basis.*—In all cases other than those in which the basis of stock is determined to be a basis other than cost under (b) or (c) of this section, the basis of stock shall be determined to be a cost basis.

(b) *Basis other than cost.*—Stock in any corporation shall be determined to have a basis other than cost if, as a result of the transaction in which such stock was acquired—

(1) The basis of such stock is fixed by reference to the basis of other property previously held by the acquiring corporation, not including any case in which the basis of such other property to such corporation was a cost basis if, at the time of the acquisition of such stock or immediately thereafter, the acquiring corporation or its shareholders were in control of the corporation from which such stock was acquired or the corporation from which such stock was acquired or its shareholders were in control of the acquiring corporation; or

(2) The basis of such stock is fixed by reference to its basis in the hands of a preceding owner not including any case in which

(i) such stock was acquired from another member of an affiliated group of corporations in a taxable year in which the acquiring corporation and the transferring corporation filed a consolidated income or excess profits tax return and

(A) the basis of such stock to the transferring corporation was a cost basis, or

(B) the basis of the stock of the transferring corporation or of any other member of the affiliated group holding stock of the transferring corporation, directly or indirectly, was a cost basis, whether or not the basis to the transferring corporation of the stock transferred was a cost basis (see section 35.761-4(c) relating to amount of basis) except in those cases in which such stock would have a basis other than cost if it had been acquired in an intercorporate liquidation described in (ii) or in an exchange described in (iii); or

(ii) such stock was acquired in an intercorporate liquidation if immediately prior to such liquidation the stock of the liquidated corporation was held by the acquiring corporation with a cost basis (see section 761(e)), or the stock which was acquired in such liquidation was held by the liquidated corporation with a cost basis; or

(iii) such stock was acquired from another member of a controlled group of corporations and

(A) the basis of such stock to the preceding owner was a cost basis, or

(B) the basis of the stock of the transferring corporation or of any other member of the controlled group holding stock of the transferring corporation, directly or indirectly, was a cost basis, whether or not the basis to the transferring corporation of the stock transferred was a cost basis (see section 35.761-4(c) relating to amount of basis) except in those cases in which such stock would have a basis other than cost if it had been acquired in an intercorporate liquidation described in (ii);

provided that if, in the opinion of the Commissioner, the liquidation of the transferor whose stock was acquired in a transaction subject to the provisions of (b) (2) (i) and (iii) has the effect of a substitution of one member of a controlled group for another member of such group, the provisions of (b) (2) (i) and (iii) shall not be applicable. For the purposes of this section a controlled group includes one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations and the common parent corporation owns directly stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of at least one of the other corporations. As used in the preceding sentence, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(c) *Statutory merger or consolidation.*—In any case in which a corporation held stock in another corporation and such corporations were merged or consolidated in a statutory merger or consolidation, such stock, for the purposes of section 761(f), shall be determined to have a cost basis in the hands of the corporation resulting from the merger or consolidation if such stock was held with a cost basis immediately prior to the statutory merger or consolidation and if, immediately thereafter, the shareholders of the holding corporation were in control of the corporation resulting from the statutory merger or consolidation. In all other cases, such stock shall be determined to have a basis other than cost in the hands of the corporation resulting from the statutory merger or consolidation.

(d) *Control.*—For the purposes of this section, in determining whether the basis of stock is a cost basis or a basis other than a cost basis, the term "control" means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of

stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation (except nonvoting stock which is limited and preferred as to dividends).

(c) *Series of stock transfers.*—The rules provided in this section shall be applicable in determining the basis of stock held by a transferee where there has been a series of transfers of such stock.

SEC. 35.761-4 COMPUTATION OF BASIS OF STOCK—AMOUNT OF BASIS.—The following rules are applicable in determining the adjusted basis of the stock with respect to which the property was received in the intercorporate liquidation, for the purposes of the computation of the plus adjustment or the minus adjustment under section 761(b) :

(a) *Time of computation.*—The adjusted basis of each share of stock with respect to which property is received in an intercorporate liquidation shall be determined immediately prior to the receipt of any property in such liquidation with respect to such share. In case of the receipt by a corporation in a statutory merger or consolidation of shares of stock of another corporation, the properties of which are deemed to have been transferred to the acquiring corporation with respect to such stock, the adjusted basis of such stock shall be determined immediately prior to the statutory merger or consolidation.

(b) *Determination of basis.*—The adjusted basis of each share of stock shall be the unadjusted basis for determining loss upon a sale or exchange, adjusted by amounts proper under section 115(1) for determining earnings and profits, under the law applicable to the year in which the intercorporate liquidation began. If such stock has a basis fixed by reference to the basis of such stock in the hands of any preceding owner, the basis of such stock to the transferee upon its receipt shall be the basis to the prior owner determined without regard to its value as of March 1, 1913, and adjusted in the hands of the prior owner (and in the hands of any owners prior to such prior owner if the basis of such stock is determined by reference to the basis in the hands of such other prior owners) by an amount equal to the adjustments proper under section 115(1) for determining earnings and profits. In any case in which such stock has a basis to the transferee fixed by reference to the basis of such stock in the hands of any preceding owner, and the basis of such stock in the hands of such preceding owner is different for invested capital purposes, because of the provisions of section 761, than for the purposes of determining gain or loss upon a sale or exchange, the basis of such stock for invested capital purposes, rather than the basis for determining gain or loss upon a sale or exchange, shall be used in determining the unadjusted basis of such stock to the transferee. If the basis of such stock to the preceding owner was a cost basis which is preserved to the transferee, and

if the preceding owner was in control of the transferor as defined in section 761(c)(3), the adjustments prescribed by this section with respect to stock owned by a transferee shall also be made with respect to the stock owned by the preceding owner for the purposes of determining the unadjusted basis of such stock to the transferee.

(c) *Acquisition of stock from member of affiliated or controlled group.*—If stock of a corporation was acquired by a member of an affiliated group of corporations from another member of such affiliated group in a transaction subject to the provisions of section 35.761-3(b)(2)(i)(B), or by a member of a controlled group of corporations as defined in section 35.761-3(b)(2) from another member of such controlled group in a transaction subject to the provisions of section 35.761-3(b)(2)(iii)(B), the basis of such stock to the acquiring corporation shall be an amount equal to the basis which such stock would have determined pursuant to the provisions of section 761(c)(1) and (e) if such stock were acquired as the result of an intercorporate liquidation of the corporation transferring such stock and of each member of the group owning stock of the transferring corporation, directly or indirectly, through which such stock would have passed prior to its acquisition by the member of the group.

(d) *Nonapplication of adjustment based on loss during consolidated return period.*—If the transferee owns stock of a transferor with which it has made a consolidated income or excess profits tax return, the basis of such stock shall not be reduced pursuant to the provisions of section 113(a)(11), or section 33.34(c) of Regulations 110, or section 23.34(c) of Regulations 104, or corresponding provisions of prior consolidated returns regulations, or similar rules of law applicable to consolidated returns, relating to decrease in basis of stock of a corporation on account of losses sustained by such corporation during a consolidated return period.

(e) *Precontrol distributions in case of cost basis stock.*—As of the date of acquisition of control by the transferee (or as of the time of the intercorporate liquidation in case control was not acquired by the transferee), the basis of the aggregate assets of the transferor attributable to stock owned by the transferee with a cost basis is to be revalued to accord with such cost basis. See section 761(c). Distributions from earnings and profits of the transferor between the date of acquisition of such stock and the date of acquisition of control (or the time of the intercorporate liquidation in case control was not acquired) may have the effect of reducing the assets of the transferor properly subject to revaluation. For the purpose of section 761 in the case of such distributions made with respect to stock having a cost basis, the basis of such stock shall be reduced by an amount proper to give effect to any such reduction in assets.

(f) *Postcontrol distributions in case of cost basis stock.*—If the stock of the transferor is deemed to have a cost basis to the transferee, the adjusted basis of the assets of the transferor must be recomputed pursuant to the provisions of section 761(c)(1) and section 35.761-5(a). A subsequent sale or other disposition of the assets of the transferor involved in such recomputation, or the use of such assets in the trade or business of the transferor will affect the earnings and profits of the transferor in amounts determined by reference to the recomputed basis. In determining whether a distribution made by the transferor to the transferee after the acquisition of control by the transferee of the transferor is a dividend within the meaning of section 115(a) or a distribution in reduction of the basis of the stock of the transferor under section 113(b)(1)(D) for the purposes of the computation of the adjusted basis of such stock to be used in the computation of the plus adjustment or the minus adjustment under section 761(b), the earnings and profits of the transferor recomputed in accordance with the method prescribed in this subsection shall be used in lieu of the earnings and profits of the transferor otherwise determined.

SEC. 35.761-5. BASIS OF PROPERTY RECEIVED IN AN INTERCORPORATE LIQUIDATION WITH RESPECT TO STOCK HAVING A COST BASIS.—(a) *Determination.*—For the purpose of determining the plus adjustment or the minus adjustment to be used in adjusting the equity invested capital of a transferee in an intercorporate liquidation pursuant to section 761 (b) and (d), the property received by a transferee in an intercorporate liquidation attributable to a share of stock of the transferor having in the hands of the transferee a basis determined under section 35.761-3 to be a cost basis shall be considered to have at the time so received an adjusted basis determined as follows:

(1) *Basis of property with respect to stock acquired on or before date of acquisition of control of transferor.*—With respect to a share of stock of the transferor acquired by the transferee with a cost basis on or before the date of acquisition by the transferee of control of the transferor, the aggregate of the property (other than money) held by the transferor at the time of the acquisition by the transferee of control of the transferor shall be considered to have an aggregate basis equal to the amount determined by—

(i) multiplying the amount of the adjusted basis of such share in the hands of the transferee at the time of acquisition of control by the aggregate number of share units in the transferor at such time, the interest represented by such share being taken as the share unit,

(ii) adding to the amount determined under (i) the amount of the liabilities of the transferor at the time of acquisition of control, and

(iii) subtracting from the sum of the amounts determined under (i) and (ii) the amount of money on hand in the transferor at the time of acquisition of control.

(2) *Basis of property with respect to stock acquired after acquisition of control of transferor.*—If a share of stock of the transferor was acquired by the transferee with a cost basis after the transferee acquired control of the transferor, the aggregate basis of the property of the transferor (other than money) held by the transferor at the time of the acquisition by the transferee of such share of the transferor shall be determined in the manner prescribed in (1), except that such computation shall be made as of the time of the acquisition of such share. A share of stock shall be considered to have been acquired after the transferee acquired control of the transferor only if, after the acquisition of such share, the transferee did not lose control of the transferor. A share of stock shall be considered to have been acquired on or before the date of acquisition of control if, after the acquisition of such share, the transferee lost control previously held in the transferor and subsequently reacquired and retained control until the time of the intercorporate liquidation.

(3) *Basis of property with respect to stock in transferor in which control is not acquired.*—If a share of stock is owned in a transferor and if immediately prior to the receipt of any property in the intercorporate liquidation in respect of such share the transferee does not have control of the transferor, the aggregate basis of the property of the transferor shall be determined in the manner prescribed in (1), except that such computation shall be made as of the time immediately prior to the receipt of the property in the intercorporate liquidation.

(4) *Redetermination of basis of property to accord with basis of stock.*—The amount determined under (1), (2), or (3) of this subsection, representing the aggregate basis of the property of the transferor at the time of acquisition of control of the transferor, at the time of acquisition of stock of the transferor subsequent to the acquisition of control, or at the time of the intercorporate liquidation may be greater or less than the amount of the aggregate adjusted basis of the property of the transferor at such time otherwise computed. Ordinarily, if—

(i) the aggregate basis of the property of the transferor determined under (1), (2), or (3) of this subsection exceeds the aggregate adjusted basis of such property otherwise computed,

such excess shall be deemed to be the basis of an asset which, for the purposes of section 761, shall be called "positive good will," or

(ii) the aggregate basis of the property of the transferor determined under (1), (2), or (3) of this subsection is less than the aggregate adjusted basis of such property otherwise computed, such difference shall be deemed to represent a deduction from the aggregate basis of the property of the transferor otherwise computed; such difference shall be represented in a credit account to be called "negative good will."

If the fair market value of the property of the transferor at the time as of which the recomputation is made is greater or less than the aggregate adjusted basis of such property determined without regard to (1), (2), or (3) of this subsection, proper adjustment shall be made to the basis of such assets to reflect such difference.

(5) *Basis of property acquired by transferor subsequent to determination of basis under (4).*—In any case in which the transferor, subsequent to the date as of which the redetermination of the basis of its property has been made pursuant to (4) of this subsection, acquires additional property, the basis of which is fixed by reference to the basis of the property redetermined under (4) of this subsection, the basis of such additional property shall be determined with respect to the basis of such property redetermined in accordance with the rules set forth in (4) of this subsection in lieu of the basis otherwise prescribed with respect to such property.

(6) *Use of basis determined for subsequent adjustments.*—The basis of the property determined under (4) or (5) of this subsection shall be used in determining, for the purposes of section 761, all subsequent adjustments to the basis of such property, as, for example, the adjustment based upon depreciation or depletion. Such basis shall also be used in lieu of the basis otherwise prescribed by section 113 in determining, for the purposes of section 761, the gain or loss resulting from a sale or other disposition of such assets by the transferor. The adjustments so obtained and the amount of gain or loss resulting from a sale or other disposition of such assets so determined shall, for the purposes of section 761, be used in computing the earnings and profits or the deficit in earnings and profits of the transferor to ascertain—

(i) whether distributions subsequent to the date as of which the aggregate basis of the assets of the transferor is determined with respect to stock having a cost basis are out of earnings and profits of the transferor;

(ii) the amount to be included in the earnings and profits of the transferee as a result of such distributions out of earnings and profits of the transferor: or

(iii) the adjustment to be made to the basis of the stock of the transferor owned by the transferee resulting from any such distributions not out of earnings and profits of the transferor.

(7) *Property received by transferee in intercorporate liquidation.*—The property received by the transferee in an intercorporate liquidation attributable to a share of stock of the transferor having a cost basis shall be considered to have, at the time of its receipt by the transferee in the intercorporate liquidation, a basis determined as follows:

(i) With respect to property so received which was owned by the transferor with a basis not determined by reference to this subsection, for example, property the basis of which had not been increased or decreased in a revaluation under (4) of this subsection or property acquired subsequent to the date of such revaluation, such property shall have the same basis to the transferee which it had in the hands of the transferor immediately prior to the intercorporate liquidation, adjusted, however, by adjustments proper under section 115(1) for the determination of earnings and profits;

(ii) With respect to property so received which was owned by the transferor with a basis increased or decreased as the result of a recomputation provided by (4) of this subsection, and with respect to property so received which had a basis fixed, as provided by (5) of this subsection, by reference to other property the basis of which was recomputed pursuant to the provisions of (4) of this subsection, such property shall have the same basis to the transferee which it had in the hands of the transferor, so increased or decreased, immediately prior to the intercorporate liquidation, adjusted, however, by adjustments proper under section 115(1) for the determination of earnings and profits; only such part of the aggregate property received by the transferee in the intercorporate liquidation as is attributable to the share of stock with a cost basis shall be considered as having the recomputed basis which such property is deemed to have under (4) or (5) of this subsection.

(b) *Control.*—For the purposes of this section, “control” means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and the ownership of at least 80 percent of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends), and shall be determined under the following rules:

(1) Control must be continued until the completion of the intercorporate liquidation.

(2) If control is lost and later reacquired (except as otherwise provided in (3)), the date of the last acquisition of control shall be considered to be the date of acquisition of control.

(3) If control, once acquired, was lost because stock of the transferor which did not possess voting power at the time such control was acquired became entitled to vote, and if control was reacquired either because the stock which became entitled to vote lost its voting power or through the acquisition of the requisite portion of such stock, and such control continues until the completion of the intercorporate liquidation, the date of acquisition of control shall be the date upon which control was first acquired.

(4) Except as otherwise provided in (6), if stock of a corporation was acquired from another corporation which had held such stock with a cost basis, and if such stock is determined to have a cost basis in the hands of the acquiring corporation fixed by reference to its basis in the hands of such other corporation, the acquiring corporation shall be deemed to have acquired such stock as of the date upon which such stock was acquired by such other corporation.

(5) If stock of a corporation was acquired from another corporation in a liquidation subject to the provisions of section 112(b) (6), or the corresponding provisions of a prior revenue law, and if the stock of the liquidated corporation was held by the acquiring corporation with a cost basis but the stock acquired was held by the liquidated corporation with a basis other than cost, the acquiring corporation shall be deemed to have acquired the stock received in the liquidation as of the date upon which it had acquired the stock of the liquidated corporation.

(6) If stock of a corporation was acquired from another corporation in a liquidation subject to the provisions of section 112(b) (6), or the corresponding provisions of a prior revenue law, and if the stock so acquired was held by the liquidated corporation and the stock of the liquidated corporation was held by the acquiring corporation, both with a cost basis, the acquiring corporation shall be deemed to have acquired the stock received in the liquidation as of the date upon which such stock was acquired by the liquidated corporation, or as of the date upon which the acquiring corporation acquired the stock of the liquidated corporation with respect to which the distribution was made, whichever date was the later.

(7) If stock of a corporation was acquired with a basis determined to be a cost basis under section 35.761-3(b) (1) because the basis of such stock was fixed by reference to the cost basis of other stock in the hands of the acquiring corporation, the acquiring corporation shall be deemed to have acquired such stock as of the date upon which it had acquired such other stock.

(8) If the basis of the stock of a transferor in the hands of the transferee was increased as the result of a statutory merger or consolidation of the transferor and another corporation, or as the result of a transaction having the effect of a statutory merger or consolidation, and if the stock of such other corporation was held by the transferee with a cost basis, that portion of the transferee's stock-holding interest in the transferor represented by the increase shall be deemed to have been acquired as of the date upon which the transferee had acquired the stock of such other corporation.

SEC. 35.761-6 BASIS OF PROPERTY RECEIVED IN AN INTERCORPORATE LIQUIDATION WITH RESPECT TO STOCK HAVING A BASIS OTHER THAN COST.—For the purpose of determining the plus adjustment or the minus adjustment to be used in adjusting the equity invested capital of a transferee in an intercorporate liquidation pursuant to section 761 (b) and (d), the property received by a transferee in an intercorporate liquidation attributable to a share of stock of the transferor having in the hands of the transferee a basis determined under section 35.761-3 to be a basis other than cost shall be considered to have at the time so received by the transferee the basis it would have had if the first sentence of section 113(a)(15) had been applicable, i. e., the basis of such property to the transferee shall be the basis which such property had in the hands of the transferor, adjusted by adjustments proper under section 115(1) in determining earnings and profits. Such basis shall be used for the purposes of section 761 in lieu of the basis for determining gain or loss upon a sale or other disposition prescribed by any provision or rule of law such as the last sentence of section 113(a)(15), or the corresponding provisions of a prior revenue law, or section 33.38(c)(3) of Regulations 110, or section 23.38(c)(3) of Regulations 104, or corresponding sections of prior consolidated returns regulations. Only such part of the aggregate property of the transferor received by the transferee in the intercorporate liquidation as is attributable to a share having a basis determined to be a basis other than cost shall be considered as having the adjusted basis which property is deemed to have under section 761(c)(2) and this section. Thus, if the aggregate basis of the assets to the transferor, properly adjusted by the adjustments required by section 115(1) is \$400,000, and if the transferee owns 90 percent of the stock of the transferor half of which was held with a basis other than cost, and receives 90 percent of the aggregate property of the transferor upon the intercorporate liquidation, the aggregate basis of the assets received by the transferee with respect to the shares held with a basis other than cost, for the purposes of section 761, is \$180,000 (one-half of 90 percent of \$400,000).

SEC. 35.761-7 ADJUSTMENT OF EQUITY INVESTED CAPITAL.—If property is received by the transferee in an intercorporate liquidation within the meaning of section 761(a), the equity invested capital of the transferee for any day following the day in which such intercorporate liquidation is completed shall be computed with the following adjustments:

(a) *Adjustment with respect to stock with cost basis.*—With respect to any share of stock in the transferor having in the hands of the transferee, immediately prior to the receipt of the property in the intercorporate liquidation, a basis determined under the provisions of section 35.761-3 to be a cost basis, the earnings and profits or the deficit in earnings and profits of the transferee shall be computed as if, on the day following the completion of the intercorporate liquidation, the transferee had realized a recognized gain equal to the amount of the plus adjustment in respect of such share or had sustained a recognized loss equal to the amount of the minus adjustment in respect of such share, computed under the provisions of sections 761(b) and 35.761-2. No other amount shall be included pursuant to any provision or rule of law in the earnings and profits of the transferee as a result of the intercorporate liquidation with respect to such share.

(b) *Adjustment with respect to stock with basis other than cost.*—With respect to any share of stock in the transferor having in the hands of the transferee, immediately prior to the receipt of the property in the intercorporate liquidation, a basis determined under the provisions of section 35.761-3 to be a basis other than cost, there shall be treated as an amount includible in the sum specified in section 718(a) (relating to equity invested capital) for each day following the intercorporate liquidation the amount of the plus adjustment computed with respect to such share under section 761(b) and section 35.761-2(a), or as an amount includible in the sum specified in section 718(b) (relating to reduction in equity invested capital) for each day following the intercorporate liquidation the amount of the minus adjustment computed with respect to such share under section 761(b) and section 35.761-2(b).

(c) *Illustration.*—The provisions of section 761 may be illustrated by the following example:

Assume that Corporation S was organized on December 31, 1928, with an authorized capital stock of \$25,000 consisting of 1,000 shares of common stock with a par value of \$25 per share. On that date, in a transaction within the provisions of section 112(b)(5) of the Revenue Act of 1928, Corporation S issued to Corporation P 600 shares of its stock in exchange for a patent which had an adjusted basis to P of \$15,000, and 400 shares of its stock to individuals in exchange for property with an adjusted basis to such individuals of

\$10,000. The basis to P of the 600 shares of stock of S is determined to be a basis other than cost. Section 113(a)(6) and section 35.761-3(b)(1). On December 31, 1931, P purchased for \$80,000 in cash the remaining 400 shares of the stock of S which it retained until the liquidation of S on December 31, 1936, under section 112(b)(6) of the Revenue Act of 1936, an intercorporate liquidation. The date of acquisition of control of S by P was December 31, 1931. Section 35.761-5(b). On December 31, 1928, the patent acquired by S had a remaining life of 15 years; on December 31, 1931, the date of acquisition of control of S by P, the patent had a fair market value of \$72,000. As of December 31, 1931, the fair market value of the remaining assets of S was identical with their adjusted basis.

Comparative balance sheets of S as of December 31, 1931, the date of acquisition of control by P, and as of December 31, 1936, the date of liquidation of S, are as follows:

Assets:	December 31, 1931	December 31, 1936
Cash	\$5, 000	\$35, 000
Current assets	60, 000	120, 000
Fixed assets (less depreciation)	30, 000	130, 000
Patent	\$15, 000	\$15, 000
Less: Reserve for amortization	3, 000	8, 000
	<u>12, 000</u>	<u>7, 000</u>
Total assets	107, 000	292, 000
Liabilities and capital:		
Current liabilities	\$12, 000	\$22, 000
Mortgage on fixed assets	15, 000	10, 000
Capital stock	25, 000	25, 000
Surplus (earnings and profits)	55, 000	235, 000
	<u>107, 000</u>	<u>292, 000</u>

The plus adjustment or the minus adjustment to be made to the invested capital of P resulting from the intercorporate liquidation of S is a direct addition to or subtraction from the equity invested capital of P with respect to the stock of S held with a basis other than cost (section 761(d)(2)); it is deemed to be a recognized gain or loss to P as of the day following the intercorporate liquidation with respect to the stock of S held with a cost basis (section 761(d)(1)). Moreover, the determination of the basis of property received with respect to stock held with a basis other than cost (section 761(c)(2)) differs from the determination of such basis with respect to stock held with a cost basis (section 761(c)(1)). Two separate computations must therefore be made.

(1) *Stock with a basis other than cost.*—With respect to the 600 shares of stock of S held by P with a basis other than cost, P is deemed to have received 60 percent ($\frac{600}{1000}$) of the assets and to have assumed 60 percent of the liabilities of S, as follows:

	<i>Total assets</i>	<i>Assets received</i>
Cash	\$35,000	\$21,000
Current assets	120,000	72,000
Fixed assets (less depreciation)	130,000	78,000
Patent	\$15,000	\$9,000
Less: Reserve for amortization	8,000	4,800
	<u>7,000</u>	<u>4,200</u>
Total	292,000	175,200
	<i>Total liabilities</i>	<i>Liabilities assumed</i>
Current liabilities	\$22,000	\$13,200
Mortgage on fixed assets	10,000	6,000
	<u></u>	<u></u>
Total	32,000	19,200

There is a plus adjustment to the equity invested capital of P in the amount of \$141,000, computed as follows:

Money received by P	\$21,000
Adjusted basis of all other property received by P	154,200
	<u></u>
Total assets received	\$175,200
Less: Adjusted basis of P to 600 shares of stock of S	\$15,000
Aggregate liabilities assumed	19,200
	<u></u>
Total	34,200
Plus adjustment	141,000

(2) *Stock with a cost basis.*—With respect to the 400 shares of stock of S held by P with a cost basis, the basis of the aggregate property of S is to be recomputed, as of December 31, 1931, the date of acquisition by P of control of S, to accord with the basis of such stock (section 761(c)(1)(A)), as follows:

Cost basis per share of stock (\$80,000 divided by 400)	\$200
Number of share units	1,000
	<u></u>
Product of cost per share and number of share units	\$200,000
Less: Money	5,000
	<u></u>
Difference	195,000
Add: Liabilities:	
Current liabilities	\$12,000
Mortgage on fixed assets	15,000
	<u></u>
	27,000
Basis of aggregate property other than money	222,000

The excess of the recomputed basis of the aggregate property of S, other than money, over the adjusted basis of such property prior to the recomputation is \$120,000 (\$222,000 minus \$102,000). The only asset which had a fair market value in excess of its adjusted basis prior to the recomputation is the patent. In the recomputation, the

basis of the patent is increased by \$60,000 under section 761(c) (1) (A) to its fair market value of \$72,000. The remainder of the excess of the recomputed basis of the aggregate property of S other than money over the adjusted basis of such property prior to the recomputation (\$120,000 minus \$60,000) becomes the basis of an account entitled "Positive good will."

As of December 31, 1931, the adjusted basis and the recomputed basis of the property of S would appear as follows:

Assets:	Adjusted basis	Recomputed basis
Cash	\$5, 000	\$5, 000
Current assets	60, 000	60, 000
Fixed assets (less depreciation)	30, 000	30, 000
Patent	\$15, 000	\$75, 000
Less: Reserve for amortization	3, 000	3, 000
	12, 000	72, 000
Positive good will		60, 000
	107, 000	227, 000

Pursuant to section 761(c) (1) (C), the recomputed basis of the patent is to be used in determining all subsequent adjustments to the basis of such asset. Thus, for each of the five years between December 31, 1931, and December 31, 1936, the date of the intercorporate liquidation, the patent will be amortized at \$6,000 per year (\$72,000 divided by 12), instead of \$1,000 per year (\$15,000 divided by 15). The total amount included in the reserve for amortization will be \$33,000 (\$3,000 plus \$30,000) instead of \$8,000 (\$3,000 plus \$5,000). As of December 31, 1936, P is deemed to have received with respect

to the 400 shares of stock of S held with a cost basis 40 percent $\left(\frac{400}{1000}\right)$ of the assets of S, including the positive good will account, revalued according to section 761(c) (1) (A) and (C), and to have assumed 40 percent of the liabilities of S. (Section 761(c) (1) (E).) The adjusted basis of the property of S as of December 31, 1936, prior to the recomputation and as recomputed, and the portion of the assets deemed to have been received and the liabilities deemed to have been assumed by P, are as follows:

Assets	Prior to recomputation	As recomputed	Assets received
Cash	\$35, 000	\$35, 000	\$14, 000
Current assets	120, 000	120, 000	48, 000
Fixed assets (less depreciation)	130, 000	130, 000	52, 000
Patent	\$15, 000	\$75, 000	\$30, 000
Less: Reserve for amortization	8, 000	33, 000	13, 200
	7, 000	42, 000	16, 800
Positive good will		60, 000	24, 000
Total	292, 000	387, 000	154, 800

Liabilities:	Total Liabilities	Liabilities assumed
Current liabilities.....	\$22,000	\$8,800
Mortgage on fixed assets.....	10,000	4,000
Total.....	32,000	12,800

There is a plus adjustment deemed to be a recognized gain to P as of January 1, 1937, in the amount of \$62,000, computed as follows:

Money received by P.....	\$14,000	
Adjusted basis of all other property received by P.....	140,800	
Total assets received.....		\$154,800
Less: Adjusted basis to P of 400 shares of stock of S.....	\$80,000	
Aggregate liabilities assumed.....	12,800	
Total.....		92,800
Plus adjustment.....		62,000

The unadjusted basis to P of the property received from S in the intercorporate liquidation is computed as follows:

	Basis with respect to 600 shares	Basis with respect to 400 shares	Total
Cash.....	\$21,000	\$14,000	\$35,000
Current assets.....	72,000	48,000	120,000
Fixed assets (less depreciation).....	78,000	52,000	130,000
Patent.....	\$9,000	\$30,000	\$39,000
Less: Reserve for amortization.....	4,800	13,200	18,000
	4,200	16,800	21,000
Positive good will.....		24,000	24,000
Total.....	175,200	154,800	330,000

For the purpose of computing the earnings and profits and the adjusted basis of the patent received from S in the intercorporate liquidation to be used in the determination of the invested capital of P for each excess profits tax taxable year, the patent would be deemed to have an unadjusted basis to P of \$21,000 as of January 1, 1937, and the annual amount of amortization from that date would be \$3,000 (\$21,000 divided by 7) instead of \$1,000, the amount of amortization taken by S.

SEC. 35.761-8 INVESTED CAPITAL BASIS.—For the purpose of computing any amount entering into the computation of the invested capital of the transferee, or of any other corporation the computation of the invested capital of which is determined by reference to the basis of property in the hands of the transferee, the adjusted basis which property received by the transferee in an intercorporate liquidation is deemed to have at the time of its receipt by the transferee,

determined under section 761(c) and section 35.761-5, shall be thereafter treated as the adjusted basis of such property in lieu of any other basis otherwise prescribed. Thus, items of depreciation or depletion or any other items computed by reference to the basis of property received in an intercorporate liquidation shall, for the purpose of computing the invested capital of the transferee, be determined by reference to the adjusted basis of such property in the hands of the transferee computed under section 761 in lieu of any basis prescribed by section 113 or any other provision or rule of law. Likewise, the adjusted basis of stock or other assets received by the transferee in an intercorporate liquidation shall, for the purpose of determining the ratio of inadmissible assets to total assets under section 720(b), be the adjusted basis as provided in section 761(c) in lieu of the basis determined under section 113. So, also, for the purpose of determining the earnings and profits resulting from a sale or other disposition of an asset received in an intercorporate liquidation the adjusted basis of such asset shall be the adjusted basis as provided in section 761(c).

SUBPART III—POST-WAR REFUND OF EXCESS PROFITS TAX

SEC. 780. POST-WAR REFUND OF EXCESS PROFITS TAX.

[ADDED BY SEC. 250, REV. ACT 1942; AMENDED BY SEC. 2, PUBLIC LAW 21 (SEVENTY-EIGHTH CONGRESS).]

(a) IN GENERAL.—The Secretary of the Treasury is authorized and directed to establish a credit to the account of each taxpayer subject to the tax imposed under this subchapter, for each taxable year ending after December 31, 1941 (except in the case of a taxable year beginning in 1941 and ending before July 1, 1942), and not beginning after the date of cessation of hostilities in the present war, of an amount equal to 10 per centum of the tax imposed under this subchapter for each such taxable year. For the purposes of this part, in the case of a taxpayer whose tax is determined under section 710(a) (3), the term "tax imposed under this subchapter" means the excess of the tax imposed by such section 710(a) (3) over the tax that would be imposed if such section 710(a) (3) were not applicable.

(b) APPLICATION OF CREDIT TO PURCHASE OF BONDS.—Within three months after the payment of the amount of the excess profits tax shown on the return for a taxable year to which subsection (a) applies (or, if such taxable year begins or ends in 1942, within one year after payment of the excess profits tax shown on the return for such year), if the payment is made before three months before the date of maturity of bonds for such year under subsection (c), there shall be issued to and in the name of the taxpayer bonds of the United States in an aggregate amount equal to 10 per centum of the tax paid in respect of which a credit is provided under subsection (a), and the credit established under subsection (a) for such taxable year is hereby made available for the purchase of such bonds.

(c) TERMS AND MATURITY OF BONDS.—The bonds provided for in subsection (a) shall be issued under the authority and subject to the

provisions of the Second Liberty Bond Act, as amended, and the purposes for which bonds may be issued under such Act are extended to include the purposes for which bonds are required to be issued under this section. Such bonds shall bear no interest, shall be nonnegotiable, and shall not be transferable by sale, exchange, assignment, pledge, hypothecation, or otherwise, on or before the date of cessation of hostilities in the present war, but after said date, such bonds shall be negotiable, and may be sold, exchanged, pledged, assigned, hypothecated, or otherwise transferred, without restriction, and shall be redeemable (at the option of the United States) in whole or in part upon three months' notice. Such bonds for any taxable year to which this section applies shall mature on the last day of that calendar year, beginning after the date of cessation of hostilities in the present war, which is shown in the following table to be applicable to such bonds for such year:

Bonds purchased with the credit for any taxable year beginning	Calendar year (beginning after cessation of hos- tilities) on last day of which bonds mature
Within the calendar year 1941 or 1942_____	2nd
Within the calendar year 1943_____	3rd
Within the calendar year 1944_____	4th
After December 31, 1944_____	5th

(d) **EXEMPTION OF PROCEEDS FROM TAX.**—The proceeds of any such bond upon redemption shall not be included in gross income.

(e) **DATE OF CESSATION OF HOSTILITIES IN THE PRESENT WAR.**—As used in this section, the term "date of cessation of hostilities in the present war" means the date on which hostilities in the present war between the United States and the governments of Germany, Japan, and Italy cease, as fixed by proclamation of the President or by concurrent resolution of the two Houses of Congress, whichever date is earlier, or in case the hostilities between the United States and such governments do not cease at the same time, such date as may be so fixed as an appropriate date for the purposes of this section.

SEC. 35.780-1 POST-WAR REFUND OF EXCESS PROFITS TAX.—(a) *In general.*—Section 780(a) authorizes and directs the Secretary to establish a post-war credit, for each taxable year specified in such section, to the account of each taxpayer subject to excess profits tax. The taxable years so specified include all taxable years under these regulations which begin on or before the "date of cessation of hostilities in the present war," as defined in section 780(e).

The post-war credit accounts of taxpayers subject to excess profits tax shall be maintained by the Commissioner of Internal Revenue.

Subject to the limitations prescribed in section 781(d) (see section 35.781-1(b)), the post-war credit of a taxpayer for a taxable year is an amount equal to 10 percent of the excess profits tax imposed upon the taxpayer for such year. For such purpose the tax imposed is the amount of tax determined under Subchapter E of Chapter 2 prior to (1) any credit under section 131, as made applicable by section 729, for tax paid or accrued to a foreign country or possession of the United States, (2) any credit for debt retirement under section 783,

and (3) any adjustment under section 734 on account of position inconsistent with prior income tax liability. If it is determined, in the case of any taxpayer with respect to any taxable year, that constructive average base period net income should be used pursuant to section 722 in computing its tax, the tax imposed, for the purpose of the post-war credit for such year, is the amount determined pursuant to the preceding sentence after the determination pursuant to such section. But in such case, pending the final determination of the tax pursuant to section 722, the tax imposed shall, for such purpose, be tentatively considered as an amount determined without regard to the determination under section 722, minus the amount, if any, by which the tax payable at the time prescribed for payment is reduced under section 710(a) (5) (relating to deferment of payment of tax in case of claim under section 722). For the purpose of the post-war credit, the tax imposed does not include any interest, penalty, additional amount, or addition to the tax.

For provisions relating to reduction of the post-war credit on account of the allowance of a credit for debt retirement, see section 783(c) and section 35.783-1(c).

(b) *Bonds*.—Section 780(b) relates to the application of the post-war credit to the purchase of bonds of the United States. Section 780(c) relates to the terms and maturity of such bonds. The Commissioner of Internal Revenue shall certify to the Secretary statements of the amounts of post-war credit when such amounts are determined. The issuance, transfer, and redemption of bonds, and other matters relating to the bonds (as distinguished from the determination and adjustment of amounts of post-war credits and the maintenance of post-war credit accounts), are within the jurisdiction of the Secretary to be handled through the office of the Commissioner of the Public Debt, not the Commissioner of Internal Revenue.

For provisions relating to reduction of the amount of bonds on account of the allowance of a credit for debt retirement, see section 783(c) and section 35.783-1(c).

(c) *Exemption of proceeds of bonds from tax*.—The proceeds of bonds upon redemption which are issued under section 780 shall not be included in gross income.

SEC. 781. SPECIAL RULES FOR APPLICATION OF SECTION 780.

[ADDED BY SEC. 250, REV. ACT 1942.]

(a) *EFFECT OF DEFICIENCIES*.—If a deficiency in respect of the excess profits tax for any taxable year for which a credit is provided in section 780(a) is paid by the taxpayer before three months before the date of maturity of the bonds for such year, an amount of such credit equal to 10 per centum of the excess of the tax imposed by this subchapter on the basis of which the deficiency was determined, over the tax imposed by this subchapter as previously computed and paid shall be available, as

provided in section 780(b), for the purchase of bonds as provided under such section, and there shall be issued to the taxpayer bonds under such section in an amount equal to such excess and with the same maturity as in the case of bonds issued with respect to the taxable year with respect to which the deficiency is determined.

(b) **EFFECT OF REFUNDS.**—If an overpayment of the tax imposed by this subchapter for any taxable year for which a credit is provided in section 780(a) is refunded or credited to the taxpayer under the internal revenue laws, the credit, if any, provided in such section then existing in favor of the taxpayer shall be reduced by an amount equal to 10 per centum of the excess of the tax imposed by this subchapter on the basis of which such tax (in respect of which the internal revenue refund or credit was made) was previously computed and paid, over the tax imposed by this subchapter as determined in connection with the determination of the amount of the overpayment. In such a case, if such credit provided in section 780(a) is less than the amount by which it is required to be reduced, or if there is no such credit then existing in favor of the taxpayer, the excess of such amount over the amount of such credit, if any, shall be carried forward as a charge against the taxpayer to be applied in reduction of a subsequent credit under section 780(a); and if no such subsequent credit is made in favor of the taxpayer, the amount of such charge (without interest) shall be paid by the taxpayer to the United States or the amount of bonds previously issued to the taxpayer under section 780(b) shall be adjusted on account of such charge.

(c) **TAX PAYMENTS AFTER CUT-OFF DATE.**—In the case of a payment of the tax imposed by this subchapter shown on the return for any taxable year for which a credit is provided in section 780(a), or the payment of a deficiency in respect of such tax for any such taxable year, after the date prescribed in section 780(b) or 781(a) but before the date of maturity of the bonds with respect to such taxable year under section 780(c), the amount of the credit under section 780(a) for such taxable year attributable to such payment shall, so far as practicable, be available, as provided in section 780(b), for the purchase of bonds as provided under such section, and, so far as practicable, there shall be issued to the taxpayer bonds under such section with the same maturity as bonds issued with respect to such taxable year. To the extent that it is not practicable to issue bonds against such amount of the credit, the taxpayer shall be paid in cash. In case after the date of maturity of the bonds of any taxable year under section 780(c) there is any credit under section 780(a) remaining in favor of the taxpayer, attributable to such year, such remainder shall be paid to the taxpayer in cash. No amount of any payment made under this subsection to a taxpayer shall be included in gross income.

(d) **LIMITATION.**—The credit under section 780(a) for any taxable year shall not be greater than the excess of the amount of the tax paid under this subchapter to the United States (and not credited or refunded under the internal revenue laws) in respect of such year over the amount of tax which would be payable to the United States if the excess profits tax rate were 81 per centum, or if the limitation of section 710 is applicable if the amount determined under such section were reduced by 10 per centum.

SEC. 35.781-1 SPECIAL RULES FOR APPLICATION OF SECTION 780.—

(a) *Deficiencies; refunds and credits of overpayments.*—In case a deficiency is paid by the taxpayer, or an overpayment is refunded or credited to the taxpayer, for any taxable year to which section 780(a) applies, appropriate adjustments will be made in the post-war credit account of the taxpayer. In such case, whenever the amount of bonds should be increased or reduced, the Commissioner of Internal Revenue shall certify the status of the account to the Secretary in order that appropriate adjustments may be made in the amount of bonds. Collection from a taxpayer under section 781(b) of the amount by which charges (arising by reason of a refund or credit of an overpayment) exceed the amount of the post-war credit of the taxpayer, and payment to a taxpayer under section 781(c) of amounts of any outstanding post-war credit against which bonds have not been issued, shall be made by the Commissioner of Internal Revenue. Such payments to taxpayers under section 781(c) shall not be included in gross income.

(b) *Limitations on amount of post-war credit.*—The post-war credit provided for in section 780(a) (see section 35.780-1(a)) is subject to the limitations set forth in section 781(d). The limitations operate in certain cases in which the taxpayer takes a credit against excess profits tax, pursuant to section 131, as made applicable by section 729, for tax paid or accrued to a foreign country or United States possession. They operate also to eliminate or reduce the post-war credit in case the excess profits tax is not paid, or is not paid in full, and in certain cases in which the excess profits tax is reduced by an adjustment under section 734 on account of position inconsistent with prior income tax liability (as, for example, if the amount of such reduction exceeds the amount of excess profits tax that would be payable if the excess profits tax rate were 81 percent). The limitations are as follows:

(1) The post-war credit is provided only with respect to excess profits tax *paid* (and not credited or refunded under the internal revenue laws). (See example (1), below.)

(2) The post-war credit for any taxable year, other than a taxable year to which section 710(a)(1)(B) is applicable, shall not be greater than the excess of the excess profits tax paid over the amount which would be payable if the excess profits tax rate were 81 percent. (See examples (1) and (2), below.)

(3) In the case of any taxable year to which section 710(a)(1)(B) is applicable (limiting excess profits tax to an amount which, when added to normal tax and surtax, equals 80 percent of corporation surtax net income before the credit for income subject to excess profits

tax provided in section 26(e)), the post-war credit for such year shall not be greater than the excess of the excess profits tax paid over the amount which would be payable if the amount determined under section 710(a)(1)(B) were reduced by 10 percent. (See example (3), below.)

For the purpose of the limitations prescribed in section 781(d), the amount of credit for debt retirement allowed under section 783, if any, shall be considered as an amount of tax paid; and for such purpose, in determining amounts of tax which would be payable under the conditions prescribed in section 781(d), such amounts shall be determined without regard to any credit for debt retirement.

The application of section 781(d) may be illustrated by the following examples:

Example (1). The X Corporation has for the calendar year 1942 an adjusted excess profits net income of \$1,000,000, which is subject to the excess profits tax rate of 90 percent. The excess profits tax imposed is \$900,000 (90 percent of \$1,000,000), of which only \$850,000 is actually paid. The post-war credit of the corporation under section 780(a) computed without regard to the limitation provided in section 781(d) would be \$90,000 (10 percent of \$900,000). However, such credit is limited by section 781(d) to \$40,000, computed as follows:

Excess profits tax paid.....	\$850,000
Less excess profits tax payable if rate were 81 percent (81 percent of \$1,000,000).....	810,000
	<hr/>
Post-war credit allowable.....	40,000

Example (2). The normal-tax net income, surtax net income, and excess profits net income of the X Corporation, a domestic corporation, for the calendar year 1942 is \$1,000,000, of which \$200,000 is from sources within a foreign country and \$800,000 from sources within the United States. The amount of the normal-tax net income and of the surtax net income is stated hereinbefore without regard to the credit for income subject to excess profits tax provided in section 26(e). The corporation pays to the foreign country with respect to the calendar year 1942 income tax in the amount of \$160,000 upon income from sources therein. After allowance of the credit against normal tax and surtax for foreign tax, the amount of \$136,000 of the foreign tax is available as a credit against the excess profits tax for 1942. Such credit is limited by section 729 to one-fifth of the corporation's excess profits tax for that year since only one-fifth of its entire excess profits net income is from sources within the foreign country. The excess profits credit of the corporation for 1942 under section 712 is \$295,000, and its specific exemption under section 710(b) is \$5,000. The cor-

poration pays its excess profits tax for 1942 in full. The post-war credit of the corporation for that year is \$50,400, computed as follows:

Excess profits net income.....	\$1, 000, 000
Less:	
Specific exemption.....	\$5, 000
Excess profits credit.....	295, 000
	<u>300, 000</u>
Adjusted excess profits net income.....	<u>700, 000</u>
Excess profits tax imposed (90 percent of \$700,000).....	630, 000
Less foreign tax credit (1/3 of \$630,000).....	126, 000
	<u>504, 000</u>
Excess profits tax determined under section 710.....	<u>504, 000</u>
Post-war credit under section 780(a) computed without regard to the limitation under section 781(d) (10 percent of \$630,000 (tax imposed)).....	63, 000

Limitation under section 781(d)

Excess profits tax paid.....	\$504, 000
Less excess profits tax payable if rate were 81 percent:	
Tax at 81-percent rate (81 percent of \$700,000).....	\$567, 000
Less foreign tax credit (1/3 of \$567,000).....	113, 400
	<u>453, 600</u>
Limitation under section 781(d).....	50, 400
Post-war credit allowable.....	50, 400

Since the post-war credit under section 780(a) (\$63,000) computed without regard to the limitation under section 781(d) is greater than the amount (\$50,400) determined under section 781(d), the amount determined under section 781(d) is the amount of the post-war credit.

Example (3). The facts are the same as in example (2) except that the excess profits credit of the X Corporation under section 712 is \$95,000 instead of \$295,000 and the amount of the foreign tax available as a credit against the corporation's excess profits tax, after allowance of the credit against normal tax and surtax for foreign tax, is \$152,000 instead of \$136,000. The post-war credit of the X Corporation for the calendar year 1942 is \$60,800, computed as follows:

Excess profits net income.....	\$1, 000, 000
Less:	
Specific exemption.....	\$5, 000
Excess profits credit.....	95, 000
	<u>100, 000</u>
Adjusted excess profits net income.....	<u>900, 000</u>
Excess profits tax determined under section 710(a)(1)(A) (90 percent of \$900,000).....	810, 000

Normal-tax net income before credit for adjusted excess profits net income.....	\$1, 000, 000
Less credit for adjusted excess profits net income.....	900, 000
Normal-tax net income.....	100, 000
Normal tax (24 percent of \$100,000).....	24, 000
Surtax net income before credit for adjusted excess profits net income.....	1, 000, 000
Less credit for adjusted excess profits net income.....	900, 000
Surtax net income.....	100, 000
Surtax (16 percent of \$100,000).....	16, 000
Limitation under section 710(a) (1) (B) : 80 percent of surtax net income before credit for adjusted excess profits net income (80 percent of \$1,000,000).....	800, 000
Less:	
Normal tax.....	\$24, 000
Surtax.....	16, 000
	40, 000
Excess profits tax determined under section 710(a) (1) (B).....	760, 000
Less foreign tax credit ($\frac{1}{2}$ of \$760,000).....	152, 000
Excess profits tax determined under section 710.....	608, 000
Post-war credit under section 780(a) computed without regard to the limitation under section 781(d) (10 percent of \$760,000 (tax imposed)).....	76, 000
<i>Limitation under section 781(d)</i>	
Excess profits tax paid.....	\$608, 000
Less amount of excess profits tax determined under section 710 reduced by 10 percent (\$608,000 minus \$60,800).....	547, 200
Limitation under section 781(d).....	60, 800
Post-war credit allowable.....	60, 800

Since the post-war credit under section 780(a) (\$76,000) computed without regard to the limitation under section 781(d) is greater than the amount (\$60,800) determined under section 781(d), the amount determined under section 781(d) is the amount of the post-war credit.

SEC. 782. REGULATIONS. [ADDED BY SEC. 250, REV. ACT 1942.]

The Secretary of the Treasury is authorized to prescribe, from time to time, such rules and regulations as may be necessary to carry out the preceding provisions of this Part.

SEC. 783. CREDIT FOR DEBT RETIREMENT. [ADDED BY SEC. 250, REV. ACT 1942.]

(a) GENERAL RULE.—An amount equal to 40 per centum of the amounts paid during the taxable year in repayment of the principal of indebtedness shall, at the election of the taxpayer made in its return for

such year, be allowed as a credit against the tax for such year imposed by this subchapter.

(b) **LIMITATIONS.**—The credit under subsection (a) with respect to any taxable year shall in no event exceed whichever of the following amounts is the lesser—

(1) An amount equal to 10 per centum of the tax imposed under this subchapter for the taxable year.

(2) An amount equal to 40 per centum of the amount by which the smallest amount of indebtedness during the period beginning September 1, 1942, and ending with the close of the preceding taxable year exceeds the amount of indebtedness as of the close of the taxable year.

(3) In case such taxable year begins in 1942 prior to September 2, 1942, and ends after September 1, 1942, an amount equal to 40 per centum of the amount by which the amount of indebtedness as of September 1, 1942, exceeds the amount of indebtedness as of the close of the taxable year.

(4) In case such taxable year begins in 1941 or ends before September 1, 1942, zero.

No interest shall be allowed or paid by the United States on account of any overpayment of tax attributable to any credit allowed under this section.

(c) **REDUCTION OF CREDIT AND OF BONDS OUTSTANDING UNDER SECTION 780.**—If a credit is allowed for debt repayment in a taxable year pursuant to this section, the amount of such credit or refund shall be deducted from the credit under section 780(a) and the amount of bonds issued under section 780 shall, to the extent necessary, be correspondingly adjusted.

(d) **DEFINITION OF INDEBTEDNESS.**—For the purposes of this section the term “indebtedness” means any indebtedness of the taxpayer or for which the taxpayer is liable evidenced by a bond, note, debenture, bill of exchange, certificate, or other evidence of indebtedness, mortgage, or deed of trust.

SEC. 35,783-1 CREDIT FOR DEBT RETIREMENT.—(a) *General rule.*—Subject to the limitations prescribed in section 783(b), a taxpayer may, at its election, credit against the excess profits tax for the taxable year an amount equal to 40 percent of the aggregate of the amounts paid by the taxpayer during such year in repayment of the principal of indebtedness (as defined in section 783(d)). The credit is allowable with respect to amounts so paid, whether they constitute part or full payment of the principal of indebtedness.

The credit is allowable only with respect to “amounts paid” by the taxpayer. If, for example, indebtedness of the taxpayer in the amount of \$1,000 is satisfied by a payment of \$900 by the taxpayer, the credit is allowable only with respect to the \$900 paid. Moreover, mere reduction in indebtedness is not enough. Thus, where a taxpayer pays off its obligation on a bond for \$1,000 with its bond for \$900 (having a later maturity or a higher interest rate) no credit is allowable though there has been a reduction of \$100 in indebtedness.

The credit is allowable only with respect to amounts paid "in repayment of the principal of indebtedness." Thus, if the taxpayer purchases its own bonds as an investment or for resale as distinguished from the payment of its bonds, the credit is not allowable. If there has been a payment, as distinguished from a purchase, the fact that the evidence of an indebtedness such as a bond has not been retired and canceled in the same taxable year in which acquired by the debtor taxpayer does not preclude allowance of the credit against the tax for such year. Whether in any case an amount paid by the taxpayer upon the principal of indebtedness was paid "in repayment of the principal of indebtedness" is dependent upon all the facts and circumstances.

If the taxpayer desires to take the credit for a taxable year in which amounts are paid in repayment of indebtedness, the election to take the credit must be made in the taxpayer's return for such year. An election not to take the credit for that year, once made by filing a return on which the credit is not taken, is irrevocable after the expiration of the time prescribed by law for filing the return for such year (including the period of any extension of time for filing the return granted pursuant to section 53). An election to take the credit, once made by filing a return on which the credit is taken, similarly becomes irrevocable. The election to take the credit, or not to take the credit, for any taxable year does not in any case constitute an election for any subsequent year.

(b) *Limitations.*—The limitations provided in section 783(b) upon the credit for debt retirement are as follows:

(1) No credit for debt retirement is allowable against excess profits tax for any taxable year which ended before September 1, 1942. This is true though a post-war credit is allowable in the case of certain of such years. (See section 35.780-1(a).)

(2) In the case of a taxable year which began in 1942 prior to September 2, 1942, and ends after September 1, 1942, the credit shall in no event exceed whichever of the following amounts is the lesser:

(i) an amount equal to 10 percent of the excess profits tax imposed upon the taxpayer for such year; or

(ii) an amount equal to 40 percent of the amount by which the amount of indebtedness as of the beginning of September 1, 1942, exceeds the amount of indebtedness as of the close of the taxable year.

(3) In the case of any taxable year beginning after September 1, 1942, the credit shall in no event exceed whichever of the following amounts is the lesser:

(i) an amount equal to 10 percent of the excess profits tax imposed upon the taxpayer for such year; or

(ii) an amount equal to 40 percent of the amount by which the smallest amount of indebtedness during the period beginning with the first moment of September 1, 1942, and ending with the close of the preceding taxable year exceeds the amount of indebtedness as of the close of the taxable year.

The tax imposed, for purposes of the limitations described in this paragraph, is the amount determined as the tax imposed for purposes of section 780(a) (see section 35.780-1(a)), as such amount may (by reason of refunds, credits, or deficiencies) be adjusted pursuant to section 781(a) and (b) (see section 35.781-1(a)). The limitations prescribed in section 781(d) upon the post-war credit are not limitations upon the credit for debt retirement.

In the following examples of the computation of the credit allowable for debt retirement all indebtedness referred to is indebtedness as defined in section 783(d) (see section 35.783-1(d)).

Example (1). The excess profits tax imposed upon the X Corporation for the calendar year 1942 is \$200,000. The amounts paid by the corporation throughout the year in repayment of indebtedness total \$85,000. The outstanding indebtedness of the corporation during the year is as follows:

	Paid	Borrowed	Total indebtedness.
January 1, 1942.....			\$100,000
April 3.....	\$25,000		75,000
July 10.....		\$200,000	275,000
September 1.....			275,000
October 22.....	60,000		215,000
December 31.....			215,000
Total paid.....	85,000		

The credit allowable for debt retirement is \$20,000, computed as follows:

40 percent of \$85,000, the total repaid in the year (see section 783(a) and section 35.783-1(a))..... \$34,000

But the credit for debt retirement may not exceed whichever of the following amounts is the lesser (see section 783(b)(1) and (3) and section 35.783-1(b)(2)):

10 percent of \$200,000 (amount of tax imposed)..... \$20,000

40 percent of \$60,000 (amount by which indebtedness September 1, 1942, \$275,000, exceeds indebtedness at close of taxable year 1942, \$215,000).... 24,000

Example (2). The excess profits tax imposed upon the Y Corporation for the calendar year 1942 is \$700,000, and for the calendar year 1943 is \$800,000. The amounts paid by the corporation in repayment of indebtedness throughout the year 1942 total \$150,000, and through-

out the year 1943 total \$170,000. The outstanding indebtedness of the corporation during the years 1942 and 1943 is as follows:

	Paid	Borrowed	Total indebtedness
January 1, 1942.....			\$500,000
July 10.....	\$100,000		400,000
September 1.....			400,000
October 22.....	50,000		350,000
December 3.....		\$20,000	370,000
December 31.....			370,000
Total paid.....	150,000		
January 1, 1943.....			370,000
November 5.....	170,000		200,000
December 31.....			200,000
Total paid.....	170,000		

The credit allowable for debt retirement for 1942 is \$12,000, computed as follows:

40 percent of \$150,000, the total repaid in 1942 (see section 783(a) and section 35.783-1(a))..... \$60,000

But the credit for debt retirement for 1942 may not exceed whichever of the following amounts is the lesser (see section 783(b) (1) and (3) and section 35.783-1(b) (2)) :

10 percent of \$700,000 (amount of tax imposed)..... \$70,000

40 percent of \$30,000 (amount by which indebtedness September 1, 1942, \$400,000, exceeds indebtedness at close of taxable year 1942, \$370,000)..... 12,000

The credit allowable for debt retirement for 1943 is \$60,000, computed as follows:

40 percent of \$170,000, the total repaid in 1943 (see section 783(a) and section 35.783-1(a))..... \$68,000

But the credit for debt retirement for 1943 may not exceed whichever of the following amounts is the lesser (see section 783(b) (1) and (2) and section 35.783-1(b) (3)) :

10 percent of \$800,000 (amount of tax imposed)..... \$80,000

40 percent of \$150,000 (amount by which lowest amount of indebtedness during period beginning September 1, 1942, through close of preceding taxable year (December 31, 1942), \$350,000, exceeds indebtedness at close of taxable year (December 31, 1943), \$200,000)..... 60,000

Example (3). The facts are the same as in example (2), except that, instead of paying \$50,000 on October 22, 1942, and borrowing \$20,000 on December 3, 1942, the Y Corporation borrows \$20,000 on October 22, 1942, and pays \$50,000 on December 3, 1942.

The credit allowable for debt retirement for 1942 is \$12,000, the same amount as arrived at in example (2) and computed in the same manner as in such example.

The credit allowable for debt retirement for 1943 is \$68,000 (as distinguished from \$60,000 under example (2)), computed as follows:

40 percent of \$170,000, the total repaid in 1943 (see section 783(a) and section 35.783-1(a))	\$68,000
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Since the lowest amount of indebtedness in the period September 1, 1942, to the close of preceding taxable year is \$370,000, as distinguished from \$350,000 in example (2), the amount of the limitation under section 783(b)(2) is a higher amount than the corresponding amount under example (2). The limitations under section 783(b)(1) and (2) (see section 35.783-1(b)(3)), are as follows:

10 percent of \$800,000 (amount of tax imposed)	\$80,000
40 percent of \$170,000 (amount by which lowest amount of indebtedness during period beginning September 1, 1942, through close of preceding taxable year (December 31, 1942), \$370,000, exceeds indebtedness at close of taxable year (December 31, 1943), \$200,000)	68,000

Example (4). The excess profits tax imposed upon the Z Corporation for the calendar year 1942 is \$30,000, and for the calendar year 1943 is \$15,000. On January 1, 1942, the Z Corporation was the owner of certain real property subject to a mortgage executed by the corporation. The mortgage secured a promissory note made by the corporation, payable to mortgagee M in the amount of \$100,000. On October 1, 1942, the Z Corporation conveyed the property, subject to the mortgage, to the R Corporation, and the latter assumed the indebtedness. The Z Corporation, however, remained liable for the indebtedness. On November 2, 1942, the R Corporation paid \$15,000 on the note, the only amount paid by the R Corporation on the indebtedness. M foreclosed the mortgage in 1943, the net proceeds from the foreclosure sale of the property amounting to \$80,000, which was paid and credited upon the indebtedness on November 15, 1943, leaving \$5,000 still owing upon the original indebtedness. The Z Corporation, on December 15, 1943, paid the \$5,000 to M upon the latter's demand therefor. During the years 1942 and 1943 the Z Corporation had no other indebtedness outstanding, nor was any other indebtedness incurred or paid by it. The outstanding indebtedness of the Z Corporation during the years 1942 and 1943 is as follows:

	Paid by Z Corporation	Paid by R Corporation or from proceeds of foreclosure sale	Total indebted- ness
January 1, 1942.....			\$100,000
September 1.....			100,000
November 2.....		\$15,000	85,000
December 31.....			85,000
	(1)		
January 1, 1943.....			85,000
November 15.....		80,000	5,000
December 15.....	\$5,000		
December 31.....			
Total paid.....	5,000		

¹ Nothing paid.

No credit for debt retirement is allowable to the Z Corporation for the year 1942, since it paid no amounts in repayment of indebtedness.

The credit allowable for debt retirement for 1943 is \$1,500, computed as follows:

40 percent of \$5,000, the total repaid by Z Corporation in 1943 (see section 783 (a) and section 35.783-1 (a))..... \$2,000

But the credit for debt retirement for 1943 may not exceed whichever of the following amounts is the lesser (see section 783 (b) (1) and (2) and section 35.783-1 (b) (3)) :

10 percent of \$15,000 (amount of tax imposed)..... \$1,500

40 percent of \$85,000 (amount by which lowest amount of indebtedness during period beginning September 1, 1942, through close of preceding taxable year (December 31, 1942), \$85,000, exceeds indebtedness at close of taxable year (December 31, 1943), zero)..... 34,000

(c) *Effect upon post-war credit and bonds.*—The post-war credit and bonds purchased with such credit are required by section 783 (c) to be reduced by the amount allowed as a credit for debt retirement. If in any case the amount of the credit for debt retirement for a taxable year exceeds the post-war credit allowable for such year, the post-war credit or bonds issued to the taxpayer for any other taxable year or years shall be reduced by the amount of such excess. The Commissioner of Internal Revenue shall certify to the Secretary a statement of the amount, if any, by which the amount of bonds outstanding should be reduced.

(d) *Definition of indebtedness.*—For the purposes of the credit for debt retirement, the term “indebtedness” means any indebtedness of the taxpayer or for which the taxpayer is liable which is evidenced by

a bond, promissory note, debenture, bill of exchange, certificate, or other evidence of indebtedness, mortgage, or deed of trust, executed by either the taxpayer or any other person. Indebtedness as used in the preceding sentence means an unconditional and legally enforceable obligation for the payment of money. It includes outstanding obligations of the taxpayer held by the taxpayer for investment or resale. It does not include a contingent obligation. However, if and when a contingent obligation for the payment of money becomes absolute it is included in indebtedness. The term "indebtedness" includes indebtedness assumed by the taxpayer even though such indebtedness is evidenced, so far as the taxpayer is concerned, only by a contract with the person whose indebtedness has been assumed. An assumption of indebtedness includes, in addition to the customary forms of assumption, the acquisition of property subject to indebtedness. If indebtedness of the taxpayer or for which the taxpayer is liable is assumed by another person (thus becoming indebtedness of such other person), it does not thereby cease to be indebtedness of the taxpayer or for which the taxpayer is liable. (But credit for debt retirement is allowable to a taxpayer only with respect to amounts paid by the taxpayer. See section 783(a) and section 35.783-1(a).) An obligation ceases to be indebtedness when it is satisfied (such as by payment, whether by the taxpayer or another person), extinguished, or otherwise ceases to be legally enforceable, though such indebtedness may be replaced by indebtedness to another person or new indebtedness to the same person.

The term "indebtedness" does not include indebtedness incurred by a bank arising out of the receipt of a deposit and evidenced, for example, by a certificate of deposit, a passbook, a cashier's check, or a certified check.

In order for any indebtedness to be included within the term it must be bona fide. It must be incurred for business reasons and not merely to increase the excess profits credit or the credit for debt retirement.

Whether outstanding certificates designated by such names as "debenture preferred stock" or "guaranteed preferred stock" constitute indebtedness depends upon whether the holder has a proprietary interest in the corporation or has the rights of a creditor, determined in the light of all the facts. The name borne by the certificate is of little importance. More important attributes to be considered are whether or not there is a maturity date, the source of payment of any "interest" or "dividend" specified in the certificate (whether out of earnings or out of capital and earnings), rights to enforce payment, and other rights as compared with those of general creditors.

The term "other evidence of indebtedness" refers to evidence of indebtedness of the same general character as bonds, notes, debentures,

bills of exchange, or certificates of indebtedness, Open account book entries, invoices, or statements of account are not evidences of indebtedness.

In pursuance of the Internal Revenue Code the foregoing regulations are hereby prescribed, applicable only to taxable years beginning after December 31, 1941, and Regulations 109 and Treasury decisions in amendment thereof, in so far as Regulations 109 and such Treasury decisions relate to excess profits taxes for taxable years beginning after December 31, 1941, are hereby superseded, except that where it is appropriate under Regulations 109 and such Treasury decisions to apply with respect to taxable years beginning after December 31, 1939, and before January 1, 1942, the rules applicable to taxable years beginning after December 31, 1941, these regulations shall be applicable.

Approved: January 25, 1944.

ROBERT E. HANNEGAN,
Commissioner of Internal Revenue.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register January 26, 1944, 4:45 p. m.)

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